

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,820

322

RAYMOND A. CAMPBELL, JR.,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

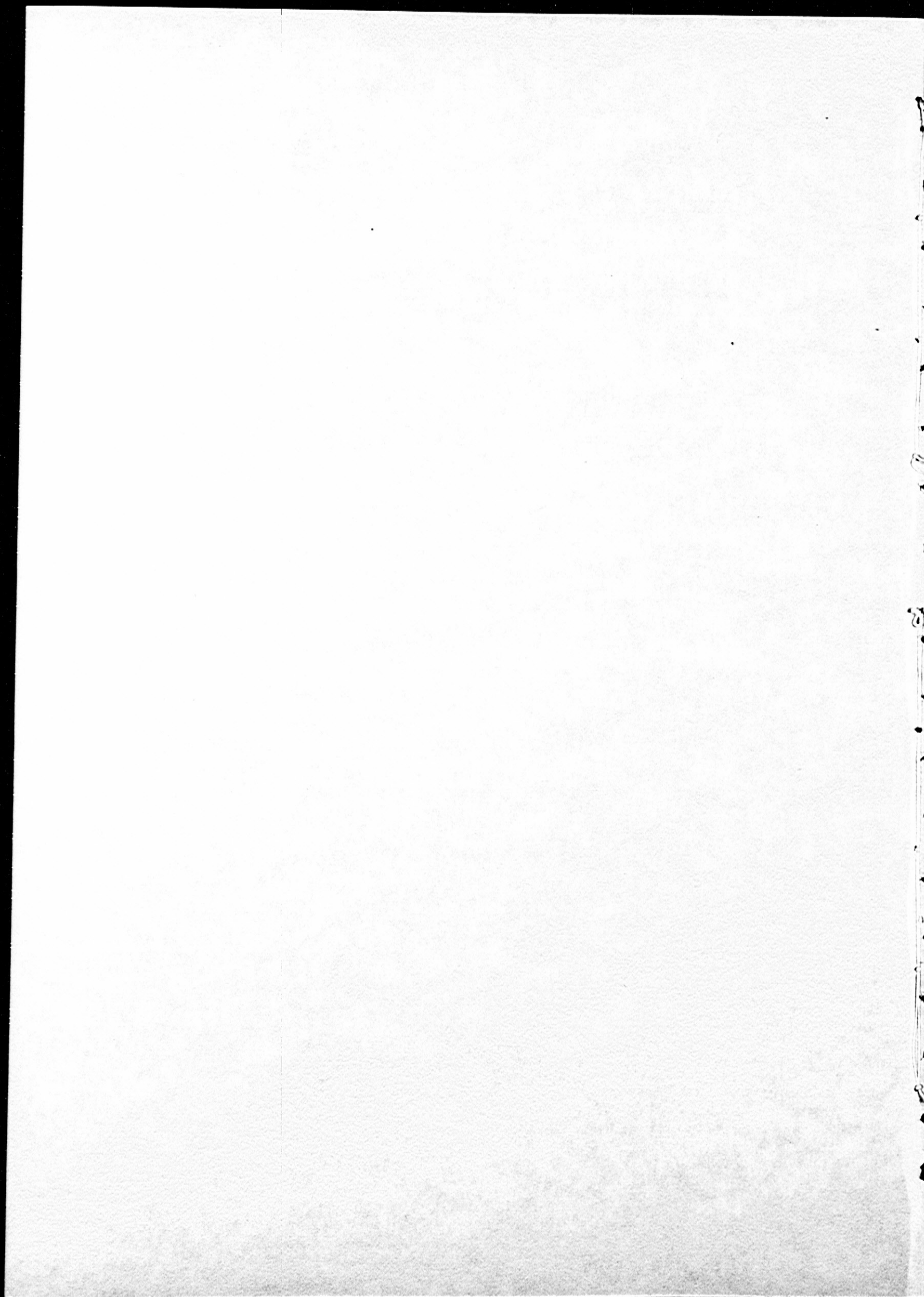
*United States Court of Appeals
For the
District of Columbia Circuit*

FILED

SEP 21 1960

Joseph W. Stewart

CLERK



(i)

INDEX

	<u>Page</u> (iii)
Docket Entries	1
Indictment, Filed February 1, 1960	2
Plea of Defendant, Filed February 5, 1960	2
Motion to Suppress Evidence, Filed March 1, 1960	3
Defendant's Points and Authorities	3
Affidavit in Support of Motion to Suppress	4
Excerpts from Transcript of Proceedings, April 6, 1960	4

Witnesses:Tr. Page

Raymond A. Campbell, Jr.		
Direct	7	5
Cross	10	6
Philip Coleman		
Direct	20	11
Cross	22	12
Herman Steiner		
Direct	25	14
Cross	31	17
Redirect	39	19
Robert L. Selby		
Direct	40	19
Cross	46	22
Redirect	48	23
Recross	48	23
Raymond A. Campbell		
Direct	52	24
Opening Statement on Behalf of the Government	63	27
Robert M. Cotton		
Direct	67	28
Cross	75	31
William F. Robinson		
Direct	80	33
Cross	90	38
Redirect	102	44
Robert L. Selby		
Direct	104	45
Cross	114	49
Herman J. Steiner		
Direct	115	49
Edgar J. Swart		
Direct	123	51
Mark Weiss		
Direct	132	53

(ii)

INDEX
(Cont'd.)

Excerpts from Transcript of Proceedings:	<u>Tr. Page</u>	<u>J.A. Page</u>
Opening Statement on Behalf of Defendant Coleman	139	57
Opening Statement on Behalf of Defendant Campbell	140	57
Philip Coleman		
Direct	149	58
Cross	157	62
Raymond A. Campbell, Jr.		
Direct	178	64
Cleveland Barr		
Direct	215	69
Cross	218	71
Robert L. Kirkpatrick		
Direct	227	73
Cross	229	74
Redirect	229	74
Recross	230	75
Raymond A. Campbell		
Direct	233	76
Philip Coleman		
Direct	234	76
Charge to the Jury	236	78
Verdict	248	84
Order Denying Defendant's Motion for Judgment of Acquittal Filed April 7, 1960		85
Verdict, Filed April 8, 1960		85
Judgment and Commitment, Filed May 23, 1960		86
Notice of Appeal, Filed May 27, 1960		87

(iii)

Docket entries in Cr. No. 130-60 as follows:

Criminal Docket
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case Closed

United States vs. 1. Philip Coleman
2. Raymond A. Campbell, Jr.

Charge: Grand Larceny; Petit Larceny (22 D.C.C. 2201, 2202) 1960:

Feb. 1 -- Presentment and Indictment filed (2 counts); Copy of
Indictment given to Deft. Cert. filed.

Feb. 1 -- Arraigned, Plea Not Guilty entered; Deft. Remanded to
the District of Columbia jail; Attorney Octave Bigoness present.
Walsh, J. (Reporter - Betty Anderson) Cert. filed.

Mar. 1 -- Motion of Deft. to suppress evidence. Points and
Authorities in support of motion to suppress, filed. Cert. of
Serv.

Mar. 18 -- Motion of Deft. to suppress evid. and affidavit in sup-
port of motion to suppress to be heard, by trial judge, with
consent of all counsel.

Apr. 6 -- Jurors sworn on Voir Dire; Jury sworn:

Valentino P. Natali	Mary F. Fredericks	George A. Owens
Mabel Rich	William T. Robertson	Dorothea S. Humphrey
Etta Goodwin	Anna K. Irving	Robert G. Matson
Mervin O. Parker	Dragomin N. Nenoff	Ruth S. Loucks

Motion of the Government to dismiss Count 2 (Petit larceny) is
by the Court granted;

Motion of the Defendant to suppress evidence is by the Court

Denied; Case is Respited until 10:00 A.M. to-morrow; No. 2:

Deft. Remanded to the District of Columbia Jail; No. 2:

Attorney Philip Herrick present; No. 1: Attorney Jacob Gordon
present. Hart, J. (Reporter - Williamson and Sanches)

Cert. filed.

Apr. 7 -- Trial Resumed; same jury; Motion of Defendant for judgment of Acquittal is by the Court denied; Case is respited until 10:00 A.M. to-morrow; No. 1: Defendant On Bond; Attorney Jacob Gordon present. No. 2: Deft. Remanded to the District of Columbia Jail; Attorney Philip F. Herrick present.
Hart, J. (Reporter - Sanches) Cert. filed.

Apr. 8 -- Trial Resumed; same jury; Jury retires to Deliberate; Verdict: Guilty of Petit Larceny under Count 1; Jury polled; Court orders lunch for jury; No. 1: Deft. committed to the District of Columbia Jail; Commitment issued; Case is referred to the Probation Officer of the Court; Attorney Jacob Gordon present. No. 2: Deft. remanded to the District of Columbia Jail; case is referred to the probation officer of the Court; Attorney Philip Herrick present.
Hart, J. (Reporter - Williamson) Cert. filed.

May 20 -- No. 2: -- Raymond A. Campbell, Jr.:

Sentenced to imprisonment for a period of One (1) year under Count 1; said sentence to take effect at the expiration of the sentence imposed in Crim. No. 816-59. Attorney Philip F. Herrick present.
Hart, J. (Reporter Williamson).

(Note: Judgment & Commitment of 5-20-60 of No. 2 was filed on May 23 although there is no docket entry with respect to said filing.)

May 27 -- No. 2: Affidavit of Deft. in support of application for leave to proceed on Appeal and for transcript of proceedings at expense of the United States, filed.

May 27 -- No. 2: Affidavit in support of application for leave to proceed on appeal without prepayment of costs & for transcript of proceedings at expense of United States, Granted and filed. Hart, J. (N)
Notice of Appeal filed.

June 2 -- Transcript of Proceedings, 5-20-60, filed. Clerk's copy * * *

June 6 -- Motion of Deft. for a New Trial, filed. Cert. of Serv.

June 6 -- Refusal of Deft. to sign election against service of sentence, filed.

June 24 -- Motion of Deft. for a new trial is by the Court, Denied.

Attorney Philip F. Herrick present. Hart, J. (Reporter * * *) * * *

July 1 -- Transcript of Proceedings 6-6-60 and 6-7-60, Vols. 1 and II * * *

JOINT APPENDIX

PLEADINGS AND DOCUMENTARY EVIDENCE

[Filed in open court Feb. 1, 1960]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled on December 22, 1959, Sworn in on Jan. 5, 1960

The United States of America	)	Criminal No. 103-'60
v.	)	Grand Jury No. 75-60
Philip Coleman	)	Violation: 22 D.C.C. 2201,
Raymond A. Campbell, Jr.	)	2202 (Grand Larceny; petit Larceny)

The Grand Jury charges:

On or about January 13, 1960, within the District of Columbia, Philip Coleman and Raymond A. Campbell, Jr. stole the property of Robert M. Cotton, of Julia R. Cotton, of Robert M. Cotton and of Richard S. Cotton, of the value of about \$358.50, consisting of the following: one sweater of the value of \$10.00, one sweater of the value of \$2.50, twelve shirts, each shirt of the value of \$2.50, one suitcase of the value of \$8.00 and one camera of the value of \$175.00, property of Robert M. Cotton; and one coat of the value of \$75.00, one bathrobe of the value of \$5.00, eight sweaters, each sweater of the value of \$2.00, one hat box of the value of \$2.00 and three hats, each hat of the value of \$5.00, property of Julia R. Cotton; one coat of the value of \$10.00,

Franklin D. Tulin, of the value of about \$70.00, consisting of the following: one suitcase of the value of \$20.00, one coat of the value of \$10.00, one jacket of the value of \$10.00, one pair of trousers of the value of \$5.00, one belt of the value of \$1.00, one shirt of the value of \$2.00, one pair of trousers of the value of \$2.00, and an assortment of tools of the value of \$20.00.

/s/ Oliver Gasch

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ Henry J. Puffa
Foreman.

[Filed Feb. 5, 1960]

PLEA OF DEFENDANT

On this 5th day of February, 1960, the defendants 1-Philip Coleman; 2-Raymond A. Campbell, Jr., appearing in proper person and by his attorney Each: Octave Bigoness, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, each pleads not guilty thereto.

The defendants are remanded to the District Jail.

By direction of

LEONARD P. WALSH

Presiding Judge
Criminal Court #1

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[Filed Mar. 1, 1960]

MOTION TO SUPPRESS EVIDENCE

Defendants Campbell and Coleman move to suppress all evidence taken from them or the automobile in which they were riding on January 13, 1960, as well as all observations made by the police on that

occasion, on the grounds that there was no probable cause for their arrest and the search and seizure were therefore invalid.

/s/ Jacob Gordon

/s/ Philip F. Herrick

Attorneys for Defendants

I certify that I served a copy on the United States Attorney
March 1, 1960.

/s/ Philip F. Herrick

[Filed Mar. 1, 1960; Harry M. Hull]

DEFENDANTS' POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO SUPPRESS

Henry v. US, 80 Sup. Ct. 168 (Nov. 23, 1959).

/s/ Jacob Gordon

/s/ Philip F. Herrick

Attorneys for Defendants

[Filed Mar. 1, 1960]

AFFIDAVIT IN SUPPORT OF
MOTION TO SUPPRESS

DISTRICT OF COLUMBIA : ss

Raymond A. Campbell, Jr. and Philip Coleman, being first duly sworn on oath depose and say:

That on January 13, 1960, shortly after 6:00 o'clock p.m. they went to a used car lot in the 1100 block of Bladensburg Road, where Campbell was to purchase a car; that they talked with the lot operator and that Campbell arranged to purchase a car for \$75.00; that the lot operator then sent them with an employee named Robinson in a car belonging to the operator to get the necessary funds; that shortly thereafter, on Sixth Street, S.W. they were stopped by two police officers for

driving without lights; that after they were stopped the officers searched the car and found some allegedly stolen goods in the back; that there-
after the affiants and Robinson were arrested and booked for larceny.

/s/ Raymond A. Campbell, Jr.

/s/ Philip Coleman

(Jurat dated Feb. 25, 1960)

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[Filed July 18, 1960]

1

Washington, D. C.

Wednesday, April 6, 1960

The above-entitled matter came on for trial before THE HONOR-
ABLE GEORGE L. HART, JR., Judge, United States District Court
for the District of Columbia, and a jury.

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PROCEEDINGS

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(At the Bench:)

MR. O'MALLEY: Your Honor, I inherited this case from Mr.
Warner because he is otherwise engaged. The first charge is grand
larceny and the second charge is petit larceny. Mr. Warner has ad-
vised me that the complaining witness in the second count is in West
Virginia and is unavailable for service of a subpoena. I would therefore
move to dismiss the second count of the indictment. Or to put it another
way, I would not oppose it being dismissed for want of prosecution.

THE COURT: What do you have to say?

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MR. HERRICK: I don't see how we can object. The second count
weakens your case, but if you move to dismiss it I don't see how we can
oppose it.

THE COURT: Very well.

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6 MR. HERRICK: May it please the Court, our motion is based
upon two cases, and while we are taking testimony, may I suggest to

7 Your Honor that you send for these cases because we are going to
be arguing rather extensively from them. They are both Supreme Court
of the United States cases, one, Henry versus U.S. The copy I have is
Volume 80 of the Supreme Court, page 169. The other is Jones versus
the United States which was just decided on March 29. The copy I have
is The United States Law Week of that date.

* * * *

RAYMOND A. CAMPBELL, JR.

* * * *

DIRECT EXAMINATION

BY MR. HERRICK:

* * * *

Q. And you are one of the defendants in this case? A. Yes, sir.

8 Q. Directing your attention to January 13 of this year, I believe
that you were in an automobile with the other defendant, Mr. Coleman,
and with Mr. Robinson; is that correct? A. Yes, sir.

Q. Who was driving the car? A. Robinson.

Q. And where were you seated? A. Front.

Q. Where was Coleman? A. Front.

Q. Which one of you two was on the outside? A. I was.

Q. Did a time come when you were stopped by some officers?

A. Yes, sir.

Q. I want you to tell us where that was and exactly what happened
and about what time it was. A. It was about ten minutes after seven
when the officers pulled around us and asked Robinson did he know he had
the lights off.

THE COURT: Did he know what? What did the officer say?

THE WITNESS: He asked him did he know that he had his lights
off on his car.

9 BY MR. HERRICK:

Q. What street were you on? A. Sixth Street, I think it was--

Sixth Street.

Q. Whereabouts? A. Well, it was dark. I never paid no attention to the street.

Q. Sixth Street, Southwest, I believe? A. Yes, sir.

Q. Now, what did the officers do? Did one of them get out of their car or all of them? How many officers were there? A. There was two.

Q. Did one of them or both of them get out of the car? A. The outside officer, he got out and stood outside the running board and he was talking to Robinson about his lights. And after he asked Robinson about his lights, he said, "Don't move, you're under arrest."

Q. He said that to whom? A. All of us.

Q. All three of you? A. Yes.

Q. Did he specifically say, "Don't move."? A. Yes, sir.

Q. Did he say anything about getting out of the car or not?

10 A. He told us, "Don't move", stay where we was at.

Q. What did you do after that? A. Well, we sit still like he told us.

Q. What did the officer do then? A. He got out and when he got out, he had his light and he was standing along side the car and the other officer came around to the right side.

Q. And what did he do with his light? A. He shined it in the back of the car.

Q. What did he find in the back of the car? A. Some clothes.

Q. And what did he do then after he found the clothes? A. Well then he told us that he was going to put us under arrest. He told Robinson to drive the car around to Number 4.

Q. What became of the clothes? A. They carried them upstairs.

CROSS EXAMINATION

BY MR. O'MALLEY:

Q. How long had you been in the automobile before the police officers pulled you over? A. When we was in Southwest or what?

11 Q. How long had you been in the automobile altogether? A. About

twenty minutes.

Q. Where had you just come from? A. Eleven hundred block of Bladensburg Road.

Q. That is the place where Robinson was employed, was he not?
A. That's right.

Q. In a used car place? A. Yes.

Q. And he drove you from that location down into Southwest, is that right? A. Yes, sir.

Q. He drove you approximately to the 400 block in Southwest?
A. It was no approximate, it was on Sixth Street.

Q. On Sixth Street? A. Uh-huh.

Q. Where on Sixth Street? A. I don't recall exactly what street it was, I know it was on Sixth Street.

Q. And when you arrived there, you went into a vacant house?
A. No.

12 Q. Where did you go? A. We went to his brother's girlfriend's house?

Q. You went to Coleman's brother's girlfriend's house? A. Yes.

Q. What was your purpose of going to see Robinson?

MR. HERRICK: If it please the Court, we think this goes beyond the scope of the direct and we object to it.

THE COURT: Objection overruled.

BY MR. O'MALLEY:

Q. What did you go and see Robinson for? A. We didn't go to see Robinson; we went to see his boss about a car.

Q. About buying a car? A. Yes, sir.

Q. Well then, how did you happen to be in the car with Robinson?
A. Because his boss told him to take us down home to get some money.

Q. Where is your home? A. Well home is Southeast, but he has a friend in Southeast that owed him some money.

Q. Who has a friend? A. Coleman.

Q. Coleman has a friend in Southwest that owed him some money?

13 A. Southeast, I said.

Q. What were you doing in Southwest? A. Because while we were over there, we had stopped for three cans of beer and didn't have an opener so we couldn't open it at that time. And we had a strike-- Robinson wanted to drink some beer.

Q. All right. There was a quantity of clothing in back of the automobile, was there not? A. I don't know how many. All I know is what I seen.

Q. What did you see? A. It was some articles. I don't recall what it was now.

Q. Did you see them when you got into the automobile? A. No.

Q. When did you first see them? A. When the police come there and put the light on there.

Q. When the police pulled you over for not having lights on, that is the first time you saw the clothing in the back seat? A. When he shot the light back there, that's when I seen them.

Q. As soon as the officer shone the light back there, you saw the clothing in the back seat? A. That isn't what I said.

14 Q. What did you say? A. You asked me when was the first time I saw the articles.

Q. And you said it was when the police officer shone the light on the back of the car. A. That's right.

Q. All right. And when he shone the light in the back of the car, you looked around to the back of the car, did you not? A. Sure.

Q. And when you looked around in the back of the car, what did you see? A. I seen some clothes.

Q. What specifically? A. I don't know.

Q. Did you see a black coat? A. I don't recall.

Q. Did you see a suitcase? A. If the police come and arrest you--

Q. No, I'm just asking you what you saw. A. I tell you I don't recall exactly what I saw. It was dark.

15 Q. When he flashed the light back there and after he flashed the light back there, you definitely testified there was some clothes.
A. Sure, I seen some clothes.

Q What items of apparel, coats? A. Could have been dresses as far as I know.

Q. And what color were they, do you know? A. No, I don't.

Q. Did you see a suitcase back there? A. No.

Q. Did you see any camera equipment back there? A. No, because I wasn't looking for nothing back there.

Q. We appreciate that. These clothes that you saw, were they on the back seat or were they on the floor? A. What I seen was on the back seat.

Q. All right. And were they piled up on the back seat? A. What would you call a pile?

Q. Well, what would you call a pile? A. I would consider a pile something like that (indicating) where it would be over the top of the seat. That's what I would call a pile.

Q All right. Was it high up on the back seat? A. Not specific, no.

16 Q Was there a large quantity of clothing on the back seat?

THE COURT: Was there more than one item?

THE WITNESS: Yes, there was more than one piece I would put it.

THE COURT: Were there a half a dozen?

THE WITNESS: I didn't count them.

BY MR. O'MALLEY:

Q. Were these observable from outside the automobile, do you know? A. They weren't that high?

Q. When somebody flashed the light in the back seat, were they readily seeable? A. Must not because when he did get the light, one of those big lights, he come and pulled the seat back and looked in there.

Q. He pulled the seat back? A. Yes.

Q. And he reached inside the car? A. Yes, sir.

Q. Who was that? A. The officer on the other side.

* * * *

17 Q. Junior. Excuse me. Are you the same Raymond Augusta Campbell, Jr. who was convicted of grand larceny-- A. No, I wasn't

convicted of grand larceny; I pleaded guilty to grand larceny.

* * * *

Q. And at that time, you and Mr. Coleman were taken out of the car and placed under arrest? A. Yes, sir.

MR. HERRICK: I object to the conclusion there, "placed under arrest". If you want to say what the officer said, fine. I don't think he knows when he was placed under arrest.

BY MR. O'MALLEY:

Q. Were you taken out of the car at the direction of the police officer? A. Yes.

Q. Did the police officer take you back and put you in his car? A. Yes, sir.

18 Q. Did they then take you to No. 4 Precinct and book you? A. Yes, sir.

Q. And did they direct Robinson to drive the automobile in which he and you were to No. 4 Precinct? A. Yes, sir.

Q. And were you at the 4th Precinct when Robinson arrived there in the automobile? A. He arrived behind us.

Q. All right. Was another officer in the car with Robinson? A. No, sir.

Q. He was by himself? A. He was by himself.

Q. Both the officers, Steiner and Selby, were in the automobile with you? A. Yes, and they told Robinson to turn around and follow us around to No. 4.

Q. Upon arriving at No. 4, did you immediately go into the precinct or were you there when the police officers unloaded the equipment from the back seat of Robinson's car? A. They had carried them in.

Q. You didn't see them unload the automobile? A. No.

MR. O'MALLEY: No further questions.

19 THE COURT: Do you have something further?

MR. HERRICK: Nothing further, Your Honor.

THE COURT: What time of the night were you going down Sixth Street?

THE WITNESS: Approximately, about--something after seven.

THE COURT: What date was this?

THE WITNESS: January the 13th.

THE COURT: Was it dark?

THE WITNESS: Yes, sir.

THE COURT: What lights were out on your car?

THE WITNESS: It wasn't my car.

THE COURT: On the car you were riding in.

THE WITNESS: The headlights.

THE COURT: The headlights?

THE WITNESS: I imagine, I don't know. All I know is the officer said there was no lights.

THE COURT: Did you look at the lights?

THE WITNESS: No, sir.

THE COURT: Who was driving the car?

THE WITNESS: Willie Robinson.

THE COURT: Does anybody else have any other questions?

MR. HERRICK: We have nothing more, Your Honor.

20 THE COURT: You may step down.

(The witness left the stand.)

Whereupon,

PHILIP COLEMAN

called as a witness on behalf of the defendants, having been first duly sworn, took the witness stand, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GORDON:

Q. What is your name? A. Philip Coleman.

Q. And you are one of the defendants in this case? A. That's right.

Q. Directing your attention to January 13, 1960, did you have occasion to be on Sixth Street, Southwest? A. Yes, sir.

Q. Who were you with? A. Raymond Campbell, Jr.

Q. This man sitting here? A. Yes.

Q. Who else was with you? A. Willie Robinson.

- Q. Were you in a car? A. Yes, sir.
- 21 Q. Whose car was it? A. It was Robinson's boss's car.
- Q. Where were you sitting in the car? A. I was in the middle, Campbell was on the outside.
- Q. In the front seat? A. Yes, sir.
- Q. Now, did there come a time when you were approached by two police officers? A. Yes, sir.
- Q. Well now, tell us what the police officers said as they came up to the car. A. They came up to the car and said the lights were out. Asked Robinson about the lights. Asked to see his registration card and his permit. Robinson showed it to him and he asked who else did he have in the car. He said, "Two guys who want to buy a car from my boss." Then he told us not to move, we was under arrest.
- Q. At that point he told you not to move, you were under arrest?
- A. That's right.
- Q. Now, after the officer made that statement, what did he do?
- A. Well, he took and got out of the car, off the side of the running board, and took a flashlight and came around to the other side. He put the flash-
- 22 light on the back and I seen the stuff there, and Robinson said it was ours. He said the stuff belonged to us and I said they didn't.
- Q. What did the officer do after that? A. So the officer said, "Well, if the stuff is stolen, I'm going to have to haul you down to the precinct but if it's not, I'm going to turn you loose." So he took and told us to get into the squad car and drove us down to No. 4, and Robinson, he drove down behind us.
- Q. You were taken to No. 4 Precinct? A. Yes, sir.

* * * *

CROSS EXAMINATION

BY MR. O'MALLEY:

- Q. Robinson drove alone behind you? A. Yes, sir.
- Q. And you had been in the car with Robinson for about twenty minutes before the police officers arrested you? A. Yes, sir.
- Q. And you made a stop at a vacant house in Northwest? A. I

wouldn't know what you're talking about, a vacant house.

Q. You were never in a vacant house in the Northwest? A. No, sir.

23 Q. When you got into the automobile where Robinson works, what was in the back seat of the automobile? A. I didn't look in the back seat; I just got in the car.

Q. All right. Then after you got in, did there come a time when you did look back there? A. I didn't even look back.

Q. When the officers came, they flashed a light back there; is that right? A. Yes, sir.

Q. Did you look back then? A. Yes because he said, "Whose stuff is this?"

Q. All right. Then you looked at the stuff, right? A. Yes, sir.

Q. What was it? A. Well, it was clothes back there. I don't exactly know what kind or what was back there.

Q. Did you see a camera back there? A. No, I didn't.

Q. Did you see what appeared to be a camera case? A. No.

Q. Did you see a suitcase? A. No, I don't think so.

24 Q. And do you recall whether the lights were on or off the automobile? A. I can't say because I'm going on what the officer said.

Q. You don't remember looking to see if the lights were on?

A. No.

Q. Did you later admit this to either of the officers that you had taken part in the larceny in the automobile? A. Yeah. The reason I told him that--

MR. HERRICK: Just a minute. If the Court please, we object to any of this. This goes beyond the scope of the direct. If counsel is going into the confession, we are going to have to go into how the confession was obtained.

THE COURT: The probable cause is determined as to the time of arrest. We don't want to know what happened after that. I will sustain the objection.

MR. O'MALLEY: The only reason I did it was for credibility of

the witness in his retelling the facts as they occurred.

THE COURT: Well, I'll sustain the objection.

25

* * * *

HERMAN STEINER

* * * *

DIRECT EXAMINATION

BY MR. O'MALLEY:

* * * *

Q. You are a private in the Metropolitan Police Department assigned to the 4th Precinct? A. Yes, sir.

Q. You were so assigned on January 13, 1960? A. Yes, sir.

Q. On that particular date, were you working the four to midnight shift?

26

A. Yes, sir.

Q. Were you assigned to a scout car with Officer Selby? A. Yes, sir.

Q. Directing your attention to about 7:30 p.m. on that date, did you have occasion to be in the vicinity of the 700 block of Sixth Street, Southwest? A. Yes, sir.

Q. At that time, did you notice anything unusual? A. Yes, sir.

Q. What was that? A. It was an automobile parked along the curb in the 700 block of Sixth Street. The reason I say it was unusual is because there was no one living in that area.

Q. All right. And what did you see? What happened? A. The car was parked there without lights.

Q. Was the automobile moving or parked? A. The automobile was parked.

Q. Parked? A. Yes, sir.

Q. And what did you then do? A. We kept on patrolling down the street and observed the automobile, and at that time the automobile pulled away from the curb and followed us down the street. We kept it

27

under observation for about a block until we passed the next intersection, at which time we pulled it over to the curb.

Q. Why did you pull it over to the curb?

A. Because it was being driven without lights.

Q. What was the condition of the daylight at that time? A. It was at night.

Q. And when you pulled it over to the curb, did you get out of the automobile? A. After my partner. My partner got out first.

Q. Who was driving? A. I was.

Q. After your partner got out, you got out? A. Yes, sir.

Q. How soon after your partner got out did you get out? A. A minute or two.

Q. And where did you go to after you got out? A. I talked to the operator of the car.

Q. Is that Robinson? A. Yes, sir.

Q. What did you say and what did he say? A. After my partner asked him for his permit and registration, he took me around to the back
28 of the car and he showed me the registration which was attached to the plate because it was a dealer's car.

Q. Did you look inside the car at all? A. At that time when Robinson got out, the lights in the automobile came on and I could see all the clothing and stuff in the back seat.

Q. What did you see, specifically? A. I saw a lady's black fur coat on top of a hat box.

Q. What else did you see, Officer? A. There was a whole lot of clothing back there, but that one particular item struck my eye right away.

Q. Did you see anything else that you recall? A. Later on?

Q. When you were looking in the car? A. I noticed that fur coat after the door was opened and I was going back to look at the tags. Then I went around to the other side of the automobile and asked one of the defendants, I think it was Mr. Coleman, to step out of the car. As he stepped out of the car, I noticed a movie camera between his legs on the floor in the front of the car.

Q. This clothing in the back of the automobile, what portion of the back seat did it cover? A. It covered the whole back seat and the floor.

29 The suitcase, clothing, the hat box and there was a fur coat on top of it.

Q. In seeing the fur coat, did that have some significance to you? A. Yes.

Q. What was that? A. About six or six-fifteen the same evening, I was in the station making an accident report and the complaining witness in this case--

Q. What was his name? A. Mr. Cotton--was in there reporting a theft from his automobile and I looked at the report the station clerk was writing up. I read it and I noticed there was listed a fur coat and a movie camera in the report.

Q. Did you read from the report where the larceny was alleged to have occurred from? A. Yes, sir.

Q. Where is that? A. In the 400 block of Eighth Street, Southwest.

Q. Where was this place at which you arrested the defendants with reference to that place? A. That was at Sixth and H.

Q. Approximately how many city blocks? A. About four or five blocks.

30 Q. And you say Robinson was driving the car? A. Yes, sir.

Q. Who else was in the car? A. The defendant Campbell.

Q. Where was the defendant Campbell sitting? A. I'm not sure, I think he was sitting in the middle. They were all in the front seat; the defendant Campbell was in the middle and the defendant Coleman was near the door.

Q. Do you see Campbell in court today? A. Yes. He is the defendant in the green shirt.

MR. HERRICK: We will so stipulate that the witness identified the defendant Campbell.

THE COURT: The record will indicate the witness has identified the defendant Campbell.

BY MR. O'MALLEY:

Q. Do you see Coleman that was in the car in court today?

A. Yes, he is the defendant at the end of the table in a brown leather jacket.

MR. O'MALLEY: May the record show the officer has identified the defendant Coleman, Your Honor?

THE COURT: The record will so show.

* * * *

31

CROSS EXAMINATION

BY MR. HERRICK:

* * * *

36

Q. Mr. Steiner, you are the officer who went around to the right-hand side of the car? A. That's correct.

Q. But your partner was the one who first got out of the scout car and approached the defendants' car? A. That is correct. Yes, sir.

Q. When he did that, he talked with Robinson, I assume, on the left side? A. Yes, sir.

37

Q. Now, you say the headlights were off? A. Yes, sir, all the lights in the vehicle were off.

Q. All the lights were off. A. Yes.

Q. Did they come on at any time? A. No, sir; we stopped them and they were still off.

Q. Well, did they-- A. The light inside the car came on after the operator got out of the vehicle, the dome light inside the car.

Q. Only the lights inside came on? A. Yes, sir.

Q. The front lights never did come on? A. No, sir, not until we took them to the station.

Q. It was dark at that time, wasn't it? A. Yes, sir.

Q. You needed lights to drive with? A. Yes, sir.

Q. You don't mean to tell me you permitted Robinson to drive to the station without the headlights on? A. No, we had him put them on then.

Q. Then, he turned them on? A. Yes, after we told him to turn them on.

Q. Well, that was all that was wrong with them? A. Yes.

38 Q. They just hadn't been turned on, so far as you know? A. That is correct.

Q. And when he turned them on, then they came on? A. Yes, sir.

* * * *

THE COURT: Officer, do I understand that when Robinson opened the door and got out, it was for the purpose of taking you or one of the other officers around the back of the car to see the registration?

THE WITNESS: Yes, he took me around the back to show me the registration.

THE COURT: That was you?

THE WITNESS: Yes, sir.

THE COURT: You had asked for the registration?

THE WITNESS: Yes, sir.

THE COURT: Now, when the door was opened, was it an automatic switch that put the dome light on?

THE WITNESS: Yes, sir.

THE COURT: Then what happened when the dome light went on?

THE WITNESS: I seen all the clothing and stuff in the back seat.

39 It was all over the floor and all the way up to the window. No one could have sat in there, there was so much stuff.

THE COURT: Is there anything else?

MR. HERRICK: If it please the Court, yes.

BY MR. HERRICK:

Q. Mr. Steiner, what is the name of your partner? A. Selby.

Q. And Mr. Selby is the first one who talked with the defendants?

A. Yes, sir. He got out first.

Q. And did he talk before Robinson opened the door--Excuse me. Did he talk to the people in the car before Robinson opened the door?

A. Yes, he got out of the car and talked to the driver through the window.

Q. Do you know what was said? A. No, I don't--I imagine he asked him--

THE COURT: Do you know what he said?

THE WITNESS: No, I don't know what he said.

MR. HERRICK: I have nothing further.

REDIRECT EXAMINATION

BY MR. O'MALLEY:

Q. At that time did you place anybody under arrest? A. Yes.

40 Q. Who? A. We placed all three of them under arrest.

Q. Did you do that or did Selby, or did you do it in conjunction with your partner? A. In conjunction with my partner.

MR. O'MALLEY: Nothing further.

THE COURT: You may step down, Officer.

* * * *

ROBERT L. SELBY

* * * *

DIRECT EXAMINATION

BY MR. O'MALLEY:

* * * *

Q. You are a member of the Metropolitan Police Department assigned to the 4th Precinct? A. I am.

Q. And you were so assigned on January 13, 1960? A. That is true.

41 Q. That day you worked from four in the afternoon until twelve that night? A. Yes, sir.

Q. Directing your attention to 7:30 p.m., did you have occasion to be in the 700 block of Sixth Street, Northwest, in the District of Columbia? A. I did.

Q. Did anything unusual happen at that time? A. What was that?

Q. At that time, did anything unusual happen? A. Well, while we were in the 700 block of Sixth Street, Northwest, we happened to see a car that was pulled over at the curb. Three men were in it. The motor was running.

Q. Where were they in the automobile? A. In the front seat of the automobile.

Q. You say the motor was running? A. Yes, sir.

* * * *

Q. What is the next thing--Did you again see the automobile that
42 you went past? A. The next time I saw the automobile is when we
went over to the car after having it under observation when it followed
us and it didn't have any lights, so we stopped it.

Q. How long had the automobile proceeded without lights before
you stopped it? A. A full city block.

Q. After you stopped the automobile, did you get out of your auto-
mobile? A. I got out of the scout car, yes.

Q. Did Officer Steiner get out of the scout car too at that time?
A. Not at that time.

Q. When you got out of the scout car, what did you do? A. I
went over to the automobile and asked the driver for his permit.

Q. Did you come to know that the driver's name was Robinson?
A. Yes, Robinson.

Q. All right. Then what happened, Officer? A. I asked him
for his registration.

Q. Did he give it to you? A. No. He had dealer's tags on his
car. He had his permit though.

43 Q. What happened next? A. When I asked him for his permit,
I asked him about his lights, why he didn't have his lights on.

Q. What did he say when you asked him that? A. He thought that
he did have them on, so he began fumbling with the light switch.

Q. Did there come a time when he turned them on? A. Finally
he got them on.

Q. What happened then? A. Meanwhile, while I was talking to him,
I noticed clothes laying on the back seat--there was a pile of clothes and
on top of this pile of clothes was a lady's fur coat. It was black.

Q. Did you have any conversation with any of the three persons in
the front seat regarding those clothing? A. I did.

Q. What did anyone of them say with regards to the clothing in the
back of the car? A. I don't know which one said it whether it was
Campbell or Coleman, but they said they had gotten the clothes from a
friend in Northwest.

Q. Now, did those clothes have any particular significance to you? A. Yes.

44 Q. What was that? A. About two hours previously, a Mr. Cotton came into the precinct to report a theft from his automobile. I heard part of that description of his articles that were taken out of his car.

Q. What description did you hear? A. One of them was--

MR. HERRICK: I think this is probably hearsay. If he saw the report, I don't object.

MR. O'MALLEY: I submit that isn't necessary because at the time the report was made, he overheard it and from the description he was able to recognize the articles when he saw them in the car.

THE COURT: Go ahead.

THE WITNESS: They had stated there was a woman's fur coat, which was black; there was a movie projector camera, a suitcase, women's and men's apparel; other than that, I don't remember.

BY MR. O'MALLEY:

Q. Do you recall having seen anything else in your first glimpse of the back of that car other than the lady's coat that you can identify?

A. Yes, I saw two suitcases.

Q. In the back seat? A. In the back seat.

45 Q. Did you see anything else in the front of the car at that time?

A. No, I didn't.

Q. Did there come a time you did anything with reference to the defendants Coleman and Campbell and also Robinson? A. When I saw the clothes in the car, I mentioned to my partner that--

MR. HERRICK: I don't think we need that, their conversation.

BY MR. O'MALLEY:

Q. After the conversation you had with your partner, what if anything did you do? A. He went around to the righthand side of the car and I opened the righthand door on the scout car, which was even with their car, and we slid them out of their car and into the scout car except Robinson who drove the car to the station.

Q. When did you place them under arrest? A. Well, when we

stopped them.

Q. You put them in your car for the purpose of transporting them back to No. 4 Precinct? A. Yes, sir.

46 Q. What happened to the automobile with the clothing? A. It was taken to No. 4 Precinct. It was unloaded and the clothes were taken into the precinct.

Q. Who was it taken to the precinct by? A. Robinson drove the car to the precinct.

Q. It was driven up in front of the precinct and then was Robinson taken out of it? A. Yes, after he drove it to the precinct, he was taken into the precinct.

Q. When were the clothes taken out of the automobile? A. Shortly --within a minute or two after he stopped the automobile.

Q. Who were the clothes taken out by? A. Private Steiner and Detective Swart.

MR. O'MALLEY: Your witness.

CROSS EXAMINATION

BY MR. HERRICK:

Q. Mr. Selby, when you first looked into the back of the car, you say you saw a black fur coat; is that right? A. Yes, sir.

Q. Anything else? A. Yes, I saw two suitcases and a pile of clothes.

Q. Did you see the camera? A. No, sir.

47 Q. Did you at any time go around to the righthand side of the car? A. No.

Q. You stayed on the lefthand side all the time? A. Yes, sir.

Q. Did you at any time use a flashlight? A. No--Yes, I did. I will correct that statement.

Q. Did you have a flashlight on your person or in your car? A. I had a flashlight on my person.

Q. When did you use that flashlight? A. When I was checking the permit of Robinson.

Q. Was that a pocket flashlight or a large flashlight? A. It was a two-cell flashlight with a long-range extension for traffic.

Q. The type you normally carry on your person? A. That is right.

Q. Where do you carry your flashlight? A. In my back pocket or side pocket, any pocket that is comfortable to me.

Q. Do you have in the scout car a larger flashlight that you would not carry on your person? A. That is true.

Q. Did you get that one out? A. No.

48

* * *
REDIRECT EXAMINATION

BY MR. O'MALLEY:

Q. Why did you take these three men to the precinct, Officer?

A.. We took them to the precinct on the suspicion that they had taken the clothing.

Q. That they had taken the clothing from whom? A. From Mr. Cotton's car.

MR. O'MALLEY: Nothing further of this witness, Your Honor.

RECROSS EXAMINATION

BY MR. HERRICK:

Q. Did the time come, Mr. Selby, when you asked Mr. Robinson to get out of the car? A. I don't think I asked him to get out of the car; I think he got out.

Q. Was that after he had shown you his driver's permit? A. That is correct.

49 Q. He showed you his permit while he was still in the car?

A. That is true.

Q. I assume you had to use the flashlight to look at that? A. That is right.

Q. And then he told you that the registration card was attached to the license plate around the back of the car, is that right? A. That is right.

Q. And then he got out and took you around to the back of the car? A. My partner went with him around to the back of the car.

Q. He took Mr. Steiner around to the back? A. Yes, sir.

Q. What did you do at that time? A. I stayed at the lefthand door.

50

* * *
BY MR. GORDON:

Q. Mr. Selby, which of these two defendants was sitting next to the door on the right? A. Coleman.

Q. Coleman was sitting on the right side. Now, did you hear

Officer Steiner say anything to either of these defendants?

THE COURT: When?

BY MR. GORDON:

Q At the time he approached the automobile, did you hear Officer Steiner say anything to either of these defendants? A. What do you mean? Did he say anything at all?

Q That is right. A. I might have heard him say something to them; I'm not sure.

Q. Do you remember anything specifically that he said to them?
A. Not specifically.

Q. Did he engage in conversation with them? A. I think he engaged in a conversation with Coleman. What he said to him, I
51 couldn't be too sure because--

Q. This is before you looked into the car, is it? A. This is after I had seen the clothes.

Q. Did he engage in a conversation with Coleman before he looked into the car? A. Before he looked into the car?

Q. That is right. A. No.

Q. And you were around on the lefthand side? A. I was at the lefthand door.

MR. GORDON: That is all, Your Honor.

MR. O'MALLEY: No further questions, Your Honor. The Government rests.

* * * *

52 MR. HERRICK: Will you take the stand again, Mr. Campbell.
Whereupon,

RAYMOND A. CAMPBELL

resumed the witness stand and having been previously sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. HERRICK:

Q. Mr. Campbell, you have now seen the two officers testify. I ask you which one it was said to you, "Don't move"? A. That one sitting

on the right.

Q. Was it the first one who testified or the other one? A. The second one.

Q. The second one who testified? A. Yes.

MR. HERRICK: May I ask Mr. Selby to stand up?

(Individual complied:)

BY MR. HERRICK:

Q. Was it this one? A. Yes, sir.

Q. Mr. Campbell, how were you seated in the front seat? Just who was where? A. Well, like I said, I was on the end.

53 Q. Next to the door? A. Yes, sir.

Q. And Coleman was in the middle and Robinson was in the driver's seat? A. Right.

Q. Did you have a camera between your legs on the floor? A. No, sir.

Q. Did Coleman? A. No, sir.

MR. HERRICK: That's all, if it please the Court.

MR. O'MALLEY: No questions.

THE COURT: You may step down.

(The witness left the stand.)

THE COURT: Anything else?

MR. HERRICK: Your Honor, in order to avoid taking time, may I say if we recalled Mr. Coleman, he would testify as Mr. Campbell has.

THE COURT: I will so assume that he would. Now, do you wish to argue this matter?

MR. HERRICK: Yes, Your Honor, I do. May I point out first, Your Honor, in connection with the Henry case that an arrest does not come when someone is placed under arrest. It may come, as it did
54 there, when the defendants were effectively restricted of their liberty of movement.

As the Court said--and this was also an automobile case and it was also an alleged theft case--when the officers interrupted the two men and restricted their liberty of movement, the arrest for purposes of

this case was completed.

Now, in this case there is conflicting testimony: The two defendants stated that they were told by Officer Selby, when he first came up to the car and while Mr. Steiner was still in the scout car and unable to hear what was going on, "Don't move". Thereafter he looked into the back of the car and saw the clothing which was back there.

Now, if he said to the two defendants in the front seat, "Don't move", it seems to me that he did what the Supreme Court here: He interrupted the two men and restricted their liberty of movement, and that amounted to an arrest. There was no probable cause to arrest these two defendants at that time. At that time, the issue was driving without lights and these two defendants were not driving. If a traffic offense had been committed, it was committed by Robinson and not these two defendants. There was no probable cause at that time to stop them. They were arrested--

55 THE COURT: You mean he should have let them go on while he stopped the other one? It would have been rather difficult.

MR. HERRICK: No, but he didn't have to say, "Don't move", may it please the Court.

THE COURT: Well, did he call them by name and say, "Don't move"?

MR. HERRICK: He spoke to them and said, "Don't move"; he didn't know their names.

THE COURT: He spoke to the car if he spoke at all, didn't he?

MR. HERRICK: Sir, his witnesses testified that he spoke to them and said, "Don't move". And if he did, may it please the Court, then I submit that they were effectively interrupted, they were restricted of their liberty and, therefore, within the Henry case, arrested without probable cause because there was no ground to arrest them.

Ordinarily, when a man is stopped for a traffic offense, I believe, that anyone else in the car is free to get up and go. Only the driver who is placed under arrest, I suppose the others could drive the car away and leave the driver there with the officer. That isn't what happened.

The officer said, "Don't move".

Now, both of these defendants testified that is what happened before anybody looked into the back seat. Then, may it please the Court,

56 Mr. Steiner said that he was not in a position to hear or did not hear what Mr. Selby said. And Mr. Selby did not say he did not tell these defendants, "Don't move".

So we say that this case falls within the Henry case and that the arrest was complete prior to the time of the discovery of anything in the back; that the search followed an arrest without probable cause and must fall for that reason.

THE COURT: Mr. Gordon, do you wish to be heard?

MR. GORDON: Thank you, Your Honor. I fully adopt the argument of Mr. Herrick. As far as Mr. Coleman is concerned, I would like to point out to the Court that in the Henry case, the Supreme Court also stated that an arrest is not justified by what a subsequent search discloses and I believe that that is the rule.

THE COURT: There is no question about the latter. Motion denied.

* * * *

60 Washington, D. C.
Thursday, April 7, 1960

* * * *

63 OPENING STATEMENT ON BEHALF OF THE GOVERNMENT
BY MR. O'MALLEY

* * * *

65 * * * * The evidence will further establish that the two defendants, Coleman and Campbell, had just prior to their being arrested by these police officers gone to a used car lot where Mr. Robinson was employed. As a result of that, Mr. Robinson came down to the Southwest, driving in a dealer's automobile owned by the car lot and he had the two de-

66 fendants in the automobile with him.

The evidence will establish that the defendants asked him to stop

by a certain location and help them move some things; that he waited there for them; that they put some clothing and other items which they piled in the back seat of Mr. Robinson's car and they were going to move them to some other part of the city.

The evidence, of course, will establish that this property was recently stolen property of Mr. Cotton; that it was in the exclusive control of the defendants Coleman and Campbell shortly after the items had been stolen. I therefore, ask you to employ a principle of law that such possession after the larceny is sufficient inference, along with the other evidence, to warrant your finding that these two persons were actually the persons who stole from the automobile.

* * * *

67

ROBERT M. COTTON

* * * *

DIRECT EXAMINATION

BY MR. O'MALLEY:

* * * *

Q. Where do you live, Mr. Cotton? A. 114 East Greenway Boulevard, Falls Church, Virginia.

Q. Where do you work? A. I work for Western Electric Company.

Q. And are you employed here in the City? A. Yes.

Q. Where?

* * * *

68

Q. Now, on January 13, 1960, were you so employed at that time? A. Yes, sir.

Q. And did you work on that date? A. Yes, sir.

Q. And how did you go to work? A. In my car.

Q. Did there come a time when you parked your car that morning prior to going to work? A. Yes.

Q. Where? A. On 8th Street.

Q. Figure 8? A. Yes, 8th Street.

Q. Do you know what block on figure 8 Street? A. Well, between D and E.

Q. Is that in the District of Columbia? A. Yes.

69 Q. Now, was there anything unusual about your automobile at the time you parked it? A. No.

Q. What was in your automobile, if you recall? A. Well, I had clothing that I had brought down with me. There was two boy's coats--

Q. Was there a quantity of clothing that you had brought down?
A. Yes, there was.

Q. Brought down from where? A. New York State.

Q. Had you just moved from New York State? A. Yes, I was just transferred down here.

Q. Where did you have all these items? A. In the back of the Station Wagon, my car.

Q. Now, did there come a time when you returned to your automobile after work? After work that day--What time did you finish work?

A. Four-forty-five.

Q. Did you return to your automobile then? A. Yes.

Q. And at that time was there anything unusual about your automobile? A. Yes, there was nothing in it.

Q. Had you locked your automobile prior to leaving it? Yes.

70 Q. And when you returned, what was the condition of the automobile? A. The doors were opened--well, they were closed but you could take the handle and open them up, and the back vent window was wide open.

Q. And the items which you had left in the back seat, what was their condition? A. There was none in there.

Q. Shortly thereafter did you make a complaint to the police?
A. Yes.

Q. And at that time, did you itemize the items which were taken from your automobile? A. Yes, sir.

Q. Now, if you will, tell us what items were taken? A. There was my wife's black fur coat; my two boys' coats; a camera; a suitcase full of clothes; a box full of clothes.

Q. Did you have some men's shirts in there? A. Yes, men's

shirts.

Q. How many? A. Twelve.

71 Q. And you had some boys' coats? A. Yes.

Q. How many? A. Two.

* * * * *

72 Q. * * * * * Can you identify Government's Exhibit No. 1, for identification? A. Yes, sir.

Q. How do you identify it? A. Well, I have had it ten years.

Q. What do you identify that as, Government's Exhibit No. 1?

A. Movie camera, 16mm.

Q. Where did you last see that camera before coming into court today? A. I don't know what you mean by that.

Q. Did there come a time when that was out of your possession?

A. Yes.

Q. When was that? A. The day it was taken out of my car.

Q. Is that the day you have already testified about, January 13th?

A. Yes, sir.

Q. Was it in your car when you left to go to work that morning?

A. Yes, sir.

Q. Was it missing when you returned from work? A. Yes, sir.

* * * * *

73 Q. How do you identify Government's Exhibit No. 2? A. By the two hooks up here in the collar.

Q. What do you identify Government's Exhibit No. 2 as? A. My wife's fur coat.

Q. Did there come a time when that was out of your possession?

A. Yes, it was taken out of the car.

Q. Was it in the car when you left to go to work? A. Yes, sir.

Q. Was it missing when you returned? A. Yes, sir.

Q. Do you know what the value of that coat is, Government's Exhibit No. 2? A. My wife paid \$75.00 for it.

Q. When did she pay \$75.00 for it? A. Two years ago.

Q. I believe you testified that twelve shirts were also taken from

your automobile on January 13th? A. Yes, sir.

74 THE COURT: Mr. O'Malley, have you finished with this camera?

MR. O'MALLEY: As far as this witness is concerned, yes, Your Honor.

THE COURT: How about the value?

MR. O'MALLEY: I am going to have an expert for that, Your Honor.

THE COURT: I see.

BY MR. O'MALLEY:

Q. What was the value of the shirts you found to be missing from your automobile? A. \$2.50 a piece.

Q. I believe you testified two boys' coats were missing also?
A. Yes.

Q. What was the value of the coats at that time? A. \$10.00.

Q. Each or together? A. A piece.

Q. When had the coats been purchased? A. They were about a year old.

Q. What was the price of the coats at the time they were purchased?

75 A. The price at the time of purchase was, I believe, \$20.00--
\$25.00.

Q. Do you know a Philip Coleman or Raymond A. Campbell, Jr.?
A. No, sir.

Q. I now point to Philip Coleman, and this is Raymond A. Campbell, Jr. Have you ever seen them prior to January 13, 1960? A. No, sir.

Q. Did you ever give them permission to take anything from your automobile? A. No, sir.

MR. O'MALLEY: Your witness.

CROSS EXAMINATION

BY MR. GORDON:

* * * *

Q. This fur coat you speak of, that belongs to your wife? A. Yes, sir.

Q. Is she here today? A. No, sir.

76 Q. And the two boys' coats, they belong to your children? A. Yes, sir.

Q. Are they here today? A. no.

Q. Now, the box of clothes that you spoke of, whose clothes are they? A. Mostly mine.

Q. Are there articles belonging to someone else in that box?
A. A few belonging to the wife, yes.

Q. These shirts you speak of, whose shirts were they? A.
They were mine.

Q. When were they purchased? A. They were purchased in
1957.

Q. They are about three years old, is that right? A. Yes.

* * * *

BY MR. HERRICK:

Q. Mr. Cotton, when did you move from New York State to Falls
Church? A. I was transferred December 7, 1959.

Q. Did you come at that time? A. On the 7th, yes, sir.

77 Q. Did your family come with you? A. Yes.

Q. So you had been here about a month at that time, is that right?
A. Yes, sir.

Q. Now, on the day in question, what was the weather that day?
Do you recall? Was it stormy or was it a bright day? A. I don't re-
member, sir.

Q. You parked your car, you testified, on 8th Street between D
and E. Are there houses along there? A. Yes, sir.

Q. People live in them? A. No, I think they are renovated.

Q. Renovated? A. I believe they are getting ready to be torn
down.

Q. There were people living in them at that time, were there not?
A. Maybe in one or two.

Q. Were there other cars parked along there? A. Yes, sir.

Q. Now, this black fur coat, were you with your wife when she

purchased it? A. No, sir.

78 Q. So you know the cost which you estimated was \$75.00 because she told you? A. Yes, sir.

* * * *

Q. Your own shirts, how much did they cost? A. New they are between \$3.00 and \$3.50.

Q. And you valued them at \$2.50? A. Yes, sir.

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80 WILLIAM F. ROBINSON

* * * *

DIRECT EXAMINATION

BY MR. O'MALLEY:

* * * *

Q. Where do you live, Mr. Robinson? A. 5107 8th Street, Northwest.

Q. In the District of Columbia? A. Yes.

81 Q. And how are you employed? A. I'm an automobile salesman.

Q. For whom? A. Ben Auto Sales, 1130 Bladensburg Road, Northeast.

Q. Is that in the District of Columbia? A. Right.

Q. Were you working there on January 13th, 1960? A. Yes, I was.

Q. On that day did you have occasion to meet two gentlemen, Coleman and Campbell? A. Yes, I did.

Q. Approximately what time was that? A. Around 6:30.

Q. Where was it? A. On the lot.

Q. And did you know them prior to that time? A. No, I didn't.

THE COURT: Where did you meet them?

THE WITNESS: On the lot, the car lot.

MR. O'MALLEY: On the car lot, Your Honor.

THE COURT: I see. All right.

BY MR. O'MALLEY:

Q. And at that time, did you have a conversation with either

Campbell or Coleman? A. No, I didn't. I had a conversation with my
82 boss; he had a conversation with them.

Q. And were you directed to do something with regard to Coleman
and Campbell? A. Right.

Q. What did you do? A. Well, my boss told me--

Q. Just tell us what you did, not what you were told. A. I took
them down to Southwest.

Q. In what? A. In a '59 Plymouth.

Q. A '59 Plymouth? A. Right, belonging to my boss.

Q. All right. What kind of tags were on there? A. Dealer's
tags.

Q. Do you remember the number of the tags? A. No, I don't
remember the number. I can't recall.

Q. And what were the letters on the tags, if you recall? A. It
was "D"--I know there was a "D" on them.

Q. Now, where did you take Coleman and Campbell in the South-
west? A. It's on 9th Street around between--You know where the
83 government buildings are on Southwest, down there?

Q. No. A. 8th and D.

Q. 8th and what? A. 8th and D. You know where the govern-
ment buildings are down there at 8th and D, well, I took them in the alley
right in back of them.

Q. All right. That's in the District of Columbia? A. District
of Columbia.

Q. Did there come a time when you stopped? A. Yes, there was.

Q. And what happened after you stopped? A. Where I parked
the car, there's some houses on this side. People live in those houses.
Then there's some other houses on this side over here (gesticulating),
and I stopped in front of the houses. And I waited for them.

Q. Did you see where Coleman and Campbell went? A. They
went in the back around to the right, you know, on this side.

Q. Did you see whether or not they went in any house? A. I
didn't notice if they went in any house or not.

Q. Did there come a time when they returned to the car?

A. Yes, sir.

84 Q. How long after they left did they return to the car? A. Approximately ten minutes.

Q. All right. And when they returned, did they have anything with them? A. They had clothes.

Q. What, if anything, was done with the clothes? A. They put them in the car.

Q. Where in the car? A. In the back seat.

Q. Did they ask you to do anything with reference to those clothes? A. They said they was moving.

Q. Did they tell you where they were moving to? A. No, they didn't say.

Q. Wasn't this a bit unusual for you, working in a car lot and to be hauling clothing for Campbell and Coleman? A. Well, I'll tell you it's like if you, or anybody else, wanted to pick something up--They were supposed to pick up some money, \$75.00.

Q. For what? A. For a down payment on a '51 Oldsmobile hard top.

Q. All right. And when you got down there, what if anything did they ask you to do? A. Well, they said would I move something. I said, "Yes."

85 Q. Now, after the clothing was placed in the back seat of the car-- I believe that is what you testified? A. Right.

Q. What happened then? A. Well, I went around the corner--

Q. Wait a minute. What happened to Coleman and Campbell? A. Oh, they got in the car.

Q. All right. Where were they seated in the car? A. In the front seat.

Q. Do you know where Coleman was and where Campbell, where in the front seat particularly? A. Coleman was in the middle and Campbell was on the outside.

Q. Then what happened? A. I went around the corner to 8th

Street, I think-- yes, 8th Street; went down 8th Street, turned right at D by a gas station and then turned right again at 6th Street right near the precinct.

Q. Do you know what block that was? A. No, I don't; not off-hand. I couldn't tell you.

Q. What happened there?

86 A. I stopped there by an old church and a house.

Q. Why did you stop? A. Well, they said, "Stop here a minute."

Q. Who did? A. One of them, I don't know which one.

Q. Did you stop? A. Yes, I stopped.

Q. All right. And what occurred then? A. Well, one of them got out and went in the little areaway between the church and the house, the walkway between the church and the house, you know.

Q. What happened then? A. He was gone, I say, about five or ten minutes, so meantime I slumped down in the seat like this (demonstrating) and I sort of nodded.

Q. Do you know whether that was Coleman or Campbell? A. I couldn't tell, I don't know.

Q. All right. Did there come a time when that person returned to the car? A. Yes.

Q. Then what happened? A. Then we left there and went down, I'd say, about a block. Then there was a patrol car in the intersection. I went right around him, pulled around the patrol car. Then when we
87 got down about half the block, one of them said, "Stop here a minute"--I think it was Campbell, he dropped his hat or something. So I pulled in to the curb and stopped the car.

Q. What happened then? A. Then at that time after I got stopped, I thought we'd check off and then the officers drove up.

Q. Had you got started again? A. Yes, I had started and was about ready to pull away from the curb when they drove up. The car was in motion.

Q. The car was in motion? A. Yes.

Q. All right. Do you know why the police officer stopped you?

A. He said there were no lights on the car.

Q. Were the lights on? A. I tell you, that was the first time I drove that car and I pulled that button for the lights to be on; the lights could have been off and they could have been on.

Q. All right. Now, do you see the person Coleman about whom you have been testifying in court today? A. Do what?

Q. Do you see the person Coleman? A. Yes, I see him.

88 Q. Where is he? A. To the left.

THE COURT: How is he dressed?

THE WITNESS: He has on a tan jacket, sir.

MR. O'MALLEY: May the record show the witness has pointed to the defendant Coleman, Your Honor?

THE COURT: The record will so show.

BY MR. O'MALLEY:

Q. Do you see the person Raymond A. Campbell, Jr.? A. Yes, sir.

Q. Where is he seated? A. To the right.

Q. And how is he dressed? A. He has on a green shirt.

MR. HERRICK: I will stipulate that he pointed to the defendant Campbell.

THE COURT: All right. The record will so show.

BY MR. O'MALLEY:

Q. Then what happened? A. The officer came over to the car and said--In fact, he asked me, he said, "What you doing sitting in here?"

Q. At the time he asked you that, the two defendants were seated in the front seat of the car? A. Yeah, they were.

89 Q. Did there come a time when the officers took you and the two defendants anywhere? A. Yes, he asked me to get out of the car. He asked about the registrations so I said it was on the back on the dealers tags; so I was taking him around to show him the dealers tags on the back. Then I got back in the car.

In the meantime he asked whose stuff that was and I said it belonged to Campbell and Coleman; I said they moved. He asked where

did they get it. I don't know what was said because I didn't pay that much attention.

Q. After this conversation, did there come a time when you were taken out of the automobile again? A. Not me.

Q. How about Campbell and Coleman, what happened to them?
A. Yes, he told them to get out.

Q. And where did they get to? A. They got out the side of the car and then they went behind the car and got in the scout car, the back seat.

Q. What did you do with reference to your automobile? A. They told me to follow them to the No. 4 Precinct.

Q. And did you follow them to No. 4 Precinct? A. Yes, I did.

90 Q. Did you arrive there about the same time that Coleman and Campbell did? A. Yes, right behind them.

Q. Now, Mr. Robinson, how much education have you had?
A. Well, I passed the Hampton Institution at Hampton, Virginia.

Q. What is Hampton Institute? A. That's a college.

Q. When did you graduate? A. In 1951.

* * * *

CROSS EXAMINATION

BY MR. GORDON:

* * * *

91 Q. Now, when the police stopped you for driving without lights, did you look to see whether you had any lights on at that time? A. No, I didn't.

Q. The police officer told you that you were driving without lights, did he not? A. Yes, he said I was pulling away from the curb without lights.

Q. You didn't bother to look and see if your light switch was off?
A. Well, at the time I didn't have to because I was stopped.

Q. What was the first thing he said to you when he approached the car in which you were riding? A. He asked me for the registration and my permit.

Q. Did he ask you for that before he mentioned to you you were riding without lights? A. No, he didn't.

Q. Well, let's hear it the way it happened. A. When he stopped me, he said I was pulling away from the curb with no lights. In the meantime, I ain't said nothing to him. So he said, "Let me see your permit and registration." So I got out of the car to show him the registration out in the back of the tags.

Q. Did you get out of the car? A. Yes, I did; I got out of the car.

92 Q. Did you jump out of the car? A. No, I didn't jump out; I got out.

Q. Then you showed him your registration card? A. Right.

Q. And did the officers have a conversation with the two defendants in your presence at that time? A. Not when he was talking to me, I don't think he was talking to them; I'm not quite sure.

Q. It is your testimony that the officers were not talking to these two defendants? A. They were talking to me first because of the incident of no lights.

Q. Now, after you showed him the registration card, did you observe or hear a conversation between either of the officers and these defendants? A. Yes. The officer asked them where did they get the clothes from and they said that they were moving--I don't know where they told him they were moving from. You can ask the officer, he'll tell you.

Q. Did either of the officers ask you where you got the clothes? A. No, they didn't ask me that.

Q. They didn't ask you that, you say? A. I'm quite sure they didn't; they might have. When he asked me whose clothes it was, I told him it belonged to Coleman and Campbell. I didn't mention the name; I said it belonged to these two fellows and that they were supposed to be moving.

Q. Did you go home that evening? A. Did I go home that evening?

Q. Yes. A. No, I didn't go home.

Q. Where did you go? A. I went to the precinct.

Q. And after you left the precinct, where did you go? A. To jail.

Q. District Jail? A. I don't know if it's District Jail; downstairs, I think.

Q. You were under arrest at the time, weren't you? A. That's right.

Q. Now, did you see these two defendants at the jail? A. Sure, I saw them.

Q. When did you see them? A. At the same time everybody went through--I don't know what you call it. You go before somebody up there in the other building and after you go through that one, then you go back to the jail.

94 Q. Is that how it's done? A. I don't know how it's done. That's your worry, not mine.

Q. You were a prisoner at the jail at the time, weren't you? A. Yes, I was a prisoner. I was under arrest at the time.

Q. You were not charged with a traffic violation at the time, were you? A. No, I wasn't. Why should I be? The officer would warn you to put your lights on.

Q. Now, when did you first have a conversation with either of these two defendants after you were in jail? A. Conversation?

Q. Yes. A. Well there wasn't no particular conversation or anything. I mean we talked to each other.

Q. And when did you have this first talk? A. First talk--How could I remember that?

Q. I wish you would answer the questions. A. Well, I don't know. If I don't know, I don't know when we started talking. It was after we got in jail, I guess. I think it was the 14th of January, on my birthday.

95 Q. You remember that this arrest was made on the 13th, do you not? A. Right.

Q. Did you see them in jail that night, the night of the arrest?

A. Did I see them in jail--Sure, I seen them in jail. We all got locked

up together, I had to see them in jail.

Q. All right. Now, did you have a conversation with them that night? A. With them?

Q. Yes. A. No, we talked just general talk.

Q. Well, then, you did have a conversation. You understand what I mean by "conversation", do you not? A. Do I understand what you mean by "conversation"? We're conversating now. We're conversing, in other words.

Q. I'm not trying to be facetious. I am only asking you if you had any kind of talk with these two defendants? A. Yes, I did.

Q. Now, what was said during that talk or conversation? A. What was said? I don't know what was said; just a general conversation.

Q. You remember these other incidents pretty lucidly. Don't you remember what was said that night? A. Ask one of them what was said.

96

Q. Well, I'm asking you. A. I don't know. I can't remember.

Q. But you knew that somebody was being charged with larceny and that was important to you, wasn't it? A. Sure, we all were charged with larceny.

Q. And you don't remember what was said that night? A. No, I don't.

Q. But you remember all these things that Mr. O'Malley asked you, is that right? A. Sure, I remember.

MR. GORDON: That is all.

BY MR. HERRICK:

Q. Mr. Robinson, to get the time element straight, they came out to the lot at about 6:30, these two defendants? A. About 6:30, yes.

Q. And what time would you say that you left the lot? A. Left there about quarter to seven or seven or five to seven--I would say we left there about a quarter to seven.

Q. Now, exactly where did you go first? A. First?

Q. Yes. A. Went to 1st and Virginia Avenue, Southeast.

97 Q. What did you do there? Did you stop there? A. Yes, stopped

at the liquor store.

Q. What did you get? A. Got some beer.

Q. You got three cans, I believe it was? A. Yes.

Q. One for each one of you? A. Right.

Q. Did you get a chance to drink it? A. No.

Q. You didn't have an opener, did you? A. No.

Q. Then where did you go after that? A. To that address down there in that alley.

Q. Now, that's the one you testified is-- A. Back there by the government buildings.

Q. Out on 9th Street? A. Right.

Q. And then you have testified that thereafter you went around the corner, or several corners, and came to 6th Street? A. Sixth and G.

Q. Sixth and G, Southwest? A. Right.

98 Q. You say that is near the police station? A. Right in back of it.

Q. How close? A. Well, the police precinct is at 4th and E, between 4th and 6th on E so that means it should be approximately, I say, four blocks.

Q. All right. Now, you have testified that one of the men left the car. A. I didn't say no one of them, I said both of them left.

Q. Oh, both of them left the car. You didn't testify before that one of them left the car?

THE COURT: Which incident are you talking about? Let's be sure we understand.

MR. HERRICK: As I recall it, Your Honor, he testified that one got out and he doesn't remember which one.

THE COURT: Is that the first or second stop you are talking about?

MR. HERRICK: The second stop, Your Honor.

THE WITNESS: Oh, the second stop--Yes, one of them got out.

BY MR. HERRICK:

Q. But you don't remember which one got out? A. No, I don't.

99 Q. Now, you say that when he came back, he had something with him? A. I didn't say that.

Q. All right. I will ask you: Did he have something with him?

A. I didn't pay that much attention.

Q. You don't know whether he had anything with him or not? A. I'm not too sure.

Q. Do you know whether he put anything in the back seat at that time or not? A. I know when he opened the door, I woke up. And just as I woke up, there was stuff falling off the back seat; so I don't know, he could have put something in there and then he might not have put something in there.

Q. Now, this conversation in jail that Mr. Gordon was asking you about, did you not say at that time--Did you not ask these defendants at that time to say that you had nothing to do with any larceny-- A. I didn't have anything to do with any larceny.

Q. I'm not asking you that; I'm asking you: Didn't you ask them to say that and if they didn't you were going to drop the weight on them? Didn't you say that? A. No, sir.

100 Q. You did not threaten them in any way? A. No. I just told them, "I'm not going to jail for nothing that nobody do because I'm no criminal and I do not do no petit larceny or nothing else, and I'm not going to go to jail for nothing like that." That's what I told them.

Q. All right. A. That's just what I said.

Q. Now you do remember what you told them. A. I mean I didn't threaten them; that was all I said.

Q. All right. Now, you didn't say anything about dropping the weight on them? A. No, I didn't say nothing like that.

Q. You did not. Did you tell them that you could have them bumped off? A. I'm no Jackson--

Q. I'm asking you: Did you tell them that? A. No, I didn't tell them that.

Q. All right. Did you tell them that you used to be in a racket in Ohio? A. No.

Q. Did you offer to get Coleman a job in Ohio? A. No, I never lived in Ohio.

- Q. Did you offer to get Coleman a job in Ohio? A. No, I didn't.
- 101 Q. Did you say that you had killed a policeman in Chicago?
- A. Killed a policeman in Chicago? How could I--
- Q. I'm asking you a question. A. No.
- Q. All right. Have you ever used another name? A. Who, me?
- Q. Yes. A. No.
- Q. What name did you give at the police station? A. What name?
- I gave the name Willie Robinson first.
- Q. What name did you give second? A. My right name.
- Q. What is your right name? A. Willie Robinson.
- Q. Now, there came a time when you got out on bail, isn't that true? A. On bail?
- Q. You got out of jail on bail, did you not? A. No.
- Q. How did you get out of jail? A. I went before the Grand Jury and got out.
- Q. You were still in jail at the time you appeared before the Grand Jury? A. Yes.
- 102 Q. And your testimony before the Grand Jury was the same as your testimony here today? A. That's right.

* * * *

REDIRECT EXAMINATION

BY MR. O'MALLEY:

- Q. You testified that when the police officers came up and they asked you whose clothing was in the back seat, you pointed to the two passengers; is that right? A. Right, I did.
- Q. What did they say, if anything, at that time? A. They told them they was moving.
- Q. Who told them? A. One of them did; I don't know which one.
- Q. It was either Coleman or Campbell that said that? A. Yes. They said they was moving.
- Q. Did they say anything else at that time? A. I think they gave them some address. The address didn't sound right to the police officers.

103 Q. Do you recall what the address was? A. No. I think he said
9th and N, Northwest.

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104 ROBERT L. SELBY

* * * * *

DIRECT EXAMINATION

BY MR. O'MALLEY:

* * * * *

Q. * * * * * A. I'm attached to No. 4 Precinct, Metropolitan
Police Department, Washington, D. C.

Q. Were you so assigned on January 13, 1960? A. I was.

Q. And on that date, did you work from four in the afternoon until
105 twelve midnight? A. I did.

Q. Were you assigned to a squad car with Officer Steiner? A. Yes,
sir.

Q. Directing your attention to about 7:30 p.m., did you have oc-
casion to be in the vicinity of the 600 block of 7th Street? A. The 700
block of 6th Street.

Q. The 700 block of 6th Street. A. Yes, sir.

Q. And at that time, did anything unusual happen? A. Yes, there
was.

Q. What was that? A. We stopped an automobile for no lights,
running.

Q. All right. And who was in the automobile? A. Three people.

Q. Where were they seated in the automobile? A. All three of
them were sitting in the front seat.

Q. Did you subsequently learn the names of the people in the front
seat? A. Yes.

Q. Who was driving? A. Robinson.

106 Q. Who was seated next to Robinson? A. Campbell.

Q. Who was seated next to Campbell? A. Coleman.

Q. Do you see Coleman in court today? A. Yes, I do.

Q. Will you point to him? A. (Indicating).

Q. How is he dressed? A. Wearing a tan jacket.

Q. Do you see Campbell in court today? A. Yes, I do.

Q. Will you point to him. A. (Indicating). With the green shirt.

MR. O'MALLEY: May the record show that the witness has pointed to both Coleman and Campbell?

THE COURT: The record will so show.

BY MR. O'MALLEY:

Q. In point of order, what was the next thing that occurred? Did there come a time when you got out of the car? A. Yes.

Q. Did you get out first or did you get out after Officer Steiner?

107 A. I got out first.

Q. When you got out, where did you go? A. I went to the left-hand side--the driver's side of the automobile and I asked the man, who was Robinson, for his permit.

Q. And what occurred at that time? A. He gave me his permit and I asked him did he not know that he didn't have his lights on. He said, "No." And he started fumbling with the dash and finally he got his lights on.

Q. What next happened? A. Well, in process of checking his permit, I noticed a large pile of clothes in the back seat.

Q. Did there come a time when Robinson got out of the car?

A. There came a time.

Q. When was that? A. When he showed the registration card to my partner, which was attached to the temporary tags on the back of the car.

Q. The temporary tags, what do you mean by those? A. Well, they were dealer's tags.

Q. License tags on the outside of the automobile? A. Yes.

108 Q. What happened then? A. When he went back to show the tags and the registration card to my partner, I noticed these clothes and on top of them I noticed was a black fur coat.

* * * *

(At the Bench:)

MR. HERRICK: For the record and in order not to waive anything, I would like to renew the motion we made yesterday.

THE COURT: Your motion to strike?

MR. HERRICK: Motion to suppress.

THE COURT: Motion to suppress evidence?

MR. HERRICK: Yes, sir.

THE COURT: Motion denied.

* * * *

THE COURT: The evidence so far as the motion to suppress is already in the record.

* * * *

109

(In Open Court:)

BY MR. O'MALLEY:

Q. After you had seen the coat on the top of the things that were on the back seat of the automobile, did there come a time when you said anything to Robinson with reference to that coat and articles? A. I said something. I don't know where it was to Robinson or I just asked in general.

Q. What did you ask? A. Where the clothes came from.

THE COURT: Who was present when you asked that?

THE WITNESS: Robinson, Coleman and Campbell.

BY MR. O'MALLEY:

Q. Where were they with reference to the automobile? A. All three were sitting in the front seat when I asked that question.

110 Q. You were standing outside on the driver's side? A. I was standing outside, yes.

Q. What answer, if any, did you get from anybody inside the car? A. The answer that I got was, "I got them from a friend in Northwest."

Q. Who gave you that answer? A. That I don't know; it just came out of the car.

Q. Do you know whether it was Robinson or not? A. I don't believe it was Robinson--I'm sure it wasn't, because I was looking at him when it came out of the car.

Q. Now, what did you do with reference to the people in the automobile, if anything? A. My partner went around to the righthand side. I opened the scout car door and the lefthand door on their car, and they slid right across their front seat into the scout car.

Q. Who slid in there? A. Campbell and Coleman.

Q. What about Robinson? A. Robinson drove the automobile back to No. 4.

Q. All right. And what time did you arrive back at No. 4? A. I would say it would be about 7:40.

111 Q. What time did Coleman slid out of their car and into your squad car? A. I would say about eight minutes after we stopped them, eight or nine minutes after we stopped them.

Q. When, with reference to this 7:40? A. Well, I say we arrived at the station about 7:40; they slid into the scout car about 7:30.

Q. And when you arrived at the station, did you take Coleman and Campbell some place in the station? A. Yes, Coleman and Campbell were taken upstairs with the detectives.

Q. Were they booked at that time? A. No, they weren't.

Q. When were they booked? A. I would say 45 minutes to an hour after we arrived at the station.

Q. During that 45 minutes or an hour, what occurred generally? Don't tell us any specifics about conversations. A. The clothes were taken out of the automobile by the detective and the other private, and the complainant, whose clothes we thought they were, was called.

Q. The complainant was called to the station? A. That's right.

Q. Did there come a time when he arrived? A. He arrived.

112 Q. How soon after 7:40 did he arrive? A. He arrived, I would say, within a half hour.

* * * * *

112 Q. * * * * * A. He arrived.

Q. How soon after 7:40 did he arrive? A. He arrived, I would say, within a half hour.

* * * * *

113 Q. During this time, was any question asked Coleman or Campbell in your presence regarding the larceny from Mr. Cotton's automobile?

A. Yes.

Q. Approximately what time was the questioning asked of Coleman and what time was an answer given? A. I would say about a half hour to forty minutes when they finally admitted that they took it.

MR. HERRICK: I object to that, if it please the Court, and I would like to ask the Officer some questions before we come to that.

MR. O'MALLEY: Your Honor, I would not oppose that that be stricken.

THE COURT: We will strike it. The jury will disregard that last answer.

BY MR. O'MALLEY:

Q. Now, Officer, did you assist in moving the clothes from the automobile into the precinct? A. No, I didn't.

Q. That was Officer Steiner and Officer Swarts? A. That is right.

* * * *

114

CROSS EXAMINATION

BY MR. HERRICK:

Q. Mr. Selby, when you first got to the car in which these three men were riding and talked with Robinson, I ask you whether or not you instructed Coleman and Campbell not to move? A. No, I didn't.

Q. Not at any time? A. There was nothing said as to that.

Q. And so far as you know, Mr. Steiner did not say that either?
A. That's right.

* * * *

115

HERMAN J. STEINER

* * * *

DIRECT EXAMINATION

BY MR. O'MALLEY:

* * * *

Q. You are a member of the Metropolitan Police Department

assigned to No. 4 Precinct? A. Yes, I am.

Q. And you were so assigned on January 13, 1960? A. Yes, sir.

Q. That day you were in a squad car, assigned with your fellow-officer Selby? A. Yes, sir.

116 Q. About 7:30 that night, did you have occasion to be in the vicinity of the 600 block of 7th Street? A. The 700 block.

Q. Of 6th Street? A. Yes.

Q. And did there come a time when you pulled an automobile over to the curb? A. Yes.

Q. Did there come a time when you transferred certain parties from that car into your squad car? A. Yes, sir.

Q. And what did you do with the other automobile? A. Brought the automobile to the station.

Q. Did the automobile contain anything? A. Yes, sir.

Q. What was in it? A. A quantity of clothing and boxes.

Q. Now, who were the persons who were in the automobile when you pulled it over to the curb? A. There was Robinson, the defendant Campbell and the defendant Coleman.

Q. All right. Do you see Coleman, who was in that car on that night, in court today? A. Yes, sir.

117 Q. Would you point to him, please? A. The first defendant here (indicating).

Q. How is he dressed? A. He has a blue sweater on.

Q. Who was that? A. That is Coleman.

MR. O'MALLEY: May the record show the witness has pointed to Campbell, Your Honor?

THE COURT: What color sweater?

THE WITNESS: No, Coleman is the one at the end, right at the end of the table, with a gray sweater.

THE COURT: A gray sweater?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. O'MALLEY:

Q. Do you see anybody else here in court who was in that automobile? A. Yes, sir.

Q. Where is this other person? A. He is the one at the end of the table.

MR. O'MALLEY: May the record show the witness has identified Campbell, Your Honor?

THE COURT: How is he dressed?

THE WITNESS: He has a blue sweater like mine.

118 THE COURT: The record will show the witness has identified the defendant Campbell.

BY MR. O'MALLEY:

Q. Who else was in the automobile? A. Robinson.

Q. Now, how did the automobile get from there to the 4th Precinct?
A. I think we let Robinson drive it in. I'm not sure about that, but I think we let him drive it in.

Q. Now, after the automobile arrived to No. 4 Precinct, did you do anything with reference to the items that were in the automobile?

A. Yes, sir.

Q. What did you do with them? A. We brought them into the station.

Q. Who is "we"? A. Officer Swart and I.

* * * *

123 EDGAR J. SWART

* * * *

DIRECT EXAMINATION

BY MR. O'MALLEY:

* * * *

Q. You are a member of the Metropolitan Police Department, assigned to No. 4 Precinct? A. Yes, sir.

Q. As a plainclothes detective? A. Yes, sir.

Q. Were you so assigned on January 13th, 1960? A. Yes, I was.

Q. Directing your attention to about 7:30 or 8:00 p.m. that night,

were you at the precinct? A. Yes, I was.

124 Q. Did there come a time when you saw Officer Steiner and/or Officer Selby? A. Yes, sir.

Q. Approximately what time was that? A. Approximately quarter to 8.

Q. Where were you at the time? A. I was in the station.

Q. Did there come a time when you went outside with either Officer Steiner or Officer Selby? A. Yes, sir.

Q. With whom? A. It was Officer Steiner.

Q. Where did you go? A. To the curb in front of the station house.

Q. What was there? A. There was an automobile parked there, a 1959 Plymouth.

Q. Do you know what the license number was? A. It was a dealer's tag, to the best of my knowledge, DT 579.

Q. Is "DT" the designation for dealer's tags? A. Yes, sir, it is.

125 Q. All right. What, if anything, did you see in that automobile?
A. There was some clothing in the back seat of the automobile and a hat box and a cardboard box with clothing in it on the back seat.

Q. Was there anything in the front seat? A. Not in the front seat itself.

Q. Was there anything in the area of the front seat? A. Yes, sir, on the floor of the front seat there was a brown leather case.

Q. What, if anything, did you do with these various items that were in that automobile? A. We took these items into the station house and we took them upstairs to the detective's office.

Q. All right. I now show you what has been marked Government's Exhibit 1 for identification, and ask you if you can identify it? A. Yes, sir, I can identify it.

Q. How do you identify it? A. This is my tag I put on it with the notation of the property book and precinct number and CCR number.

Q. When did you place that tag thereon? A. On the night of January 13th.

126 Q. All right. And what do you identify Government's Exhibit 1 as? A. It is a Revere movie camera.

* * * *

Q. No. Where did you first see that movie camera? A. This is the box that I took out of the automobile in front of the station house and took up to the detective's office.

Q. You took that out in company with Officer Steiner? A. Yes, sir.

THE COURT: What was in the box?

THE WITNESS: A movie camera was in the box, Your Honor.

THE COURT: The one that is in there now?

THE WITNESS: If I may look and see (witness perusing exhibit). This looks identical to the one I checked in this box. I have the serial number written in my notes.

* * * *

129 THE WITNESS: The serial number is 860551, Your Honor.

MR. HERRICK: Your Honor, I hate to do this but I must say I found the number.

* * * *

MR. O'MALLEY: * * * * * At this time, the Government would offer into evidence Government's Exhibits 1 and 2, Your Honor.

THE COURT: Do you have any objection?

MR. HERRICK: No objection.

THE COURT: They may be admitted, subject, of course, to your motion.

MR. HERRICK: Yes, sir.

* * * *

132 MARK WEISS

* * * *

DIRECT EXAMINATION

BY MR. O'MALLEY:

* * * *

Q. How are you employed, Mr. Weiss? A. At the present time

I am president of Mark Weiss Camera Center.

Q. You are president of Mark Weiss Camera Center? A. That's right.

Q. Do you deal in cameras, both still and moving? A. That's right.

Q. And how long have you been in the camera business? A. Since 1925.

Q. During that time you have been in the business of still as well as moving cameras? A. Yes. In my own business, nine years.

133 Q. And in that business, you are familiar with prices on both new and used camera equipment? A. Yes.

Q. I now show you, Mr. Weiss, what is Government's Exhibit 1, and ask you to identify it first. Government's Exhibit 1 is a camera, right? A. Yes.

Q. Can you tell us what the fair market value presently is of Government's Exhibit 1? A. This camera sells for about \$60.00 in the store.

Q. In its present condition? A. Yes.

* * * *

134 MR. O'MALLEY: The Government rests, Your Honor.

MR. GORDON: Your Honor, I have a matter at this time to take up before the Court.

THE COURT: All right. You may approach the bench.

(At the Bench:)

MR. GORDON: Your Honor, on behalf of the defendant Coleman, and I assume that counsel for the defendant Campbell will join me in this motion, I move that the Court direct a verdict for the defendant Coleman, and of course for the other defendant, on the grounds that the Government has failed to sustain the burden of proof.

They have definitely failed to establish the value. Now, Your Honor will note that this is an indictment which alleges grand larceny.

135 Now, unless my figures are absolutely wrong, the top value that we can put on this camera, and this is through the expert testimony of

Mr. Weiss, is \$45.00. There is also--

THE COURT: I would put \$60.00 on it.

MR. GORDON: I think, Your Honor, that is taking the top value because he said he would pay \$45.00 for it.

MR. O'MALLEY: He said the fair market value for it was \$60.00.

MR. GORDON: As far as the coat is concerned, there is testimony that a fur coat was stolen; the coat that has been introduced into evidence is a synthetic fur coat. As far as the value is concerned, there was no value placed on it except that in the indictment. There is a notation or value of \$75.00 put on this coat and the testimony was that it was a fur coat, yet the evidence adduced is a synthetic fur coat.

The other items mentioned were some shirts and some boys' coats. I believe--I don't remember the value of those.

THE COURT: Two coats at \$10.00 each.

MR. GORDON: And they were, of course, not substantiated as far as value other than the statement of the father who didn't purchase the coats.

136

* * * *

MR. GORDON: The other items were the shirts. Now, the witness testified he bought these shirts in 1957 and that he paid approximately \$3.00 and change a piece for them. I think that would be a real stretch of the imagination to ascribe any value such as placed in the indictment and I feel, Your Honor, since the Government has failed to establish a value of \$100.00 for these so-called stolen articles, that the Government has failed to sustain the burden and Your Honor should direct a verdict of acquittal.

THE COURT: I think there is evidence in here on which the jury could find the value of the articles exceeded \$100.00.

* * * *

MR. HERRICK: I want to join in Mr. Gordon's motion; and also with respect to that fur coat, I would like to point out that that evidence is hearsay. He was not there when the coat was purchased. He said that his wife told him that when she bought it two years ago, she paid \$75.00

and that is the only evidence we have as to its value.

* * * *

137 THE COURT: Then, also, don't forget that in this case I think we would have to give the instruction on the lesser included offense.

MR. O'MALLEY: Yes, sir, if they find it is less than \$100.00.

MR. GORDON: I was anticipating that would happen. This is a criminal case and, certainly, it is incumbent upon the Government to prove beyond a reasonable doubt that a crime was committed. If they have not proven a crime was committed insofar as the value is concerned then the motion should be granted and not have the jury determine as to whether it is petit larceny or grand larceny.

THE COURT: I think at the conclusion of this evidence, the jury will be justified in finding either.

MR. GORDON: At this time, I would like to renew my motion for suppression of the evidence.

THE COURT: I will deny that one too.

MR. HERRICK: I will join in that motion, for the record.

THE COURT: Motion denied.

* * * *

138 THE COURT: I will strike that testimony and tell the jury that they have seen the coat which is in evidence and it is up to them to determine the value of it.

MR. HERRICK: All right, sir.

* * * *

(In Open Court:)

THE COURT: Ladies and gentlemen of the jury, the complaining witness testified that his wife told him that she paid \$75.00 for the coat which is Government's Exhibit No. 2 in evidence.

Since the Court holds that is hearsay evidence, the Court will strike that evidence as to what he said his wife paid for the coat and the jury will disregard it. The coat is in evidence and the jury has had a chance to see and examine it, and the jury will determine what the value

139 on the coat is. All right, you may proceed.

* * * *

OPENING STATEMENT ON BEHALF OF DEFENDANT
COLEMAN BY MR. GORDON

MR. GORDON: Your Honor, ladies and gentlemen of the jury:
It is now my time, the time of the defendant to present the defense in this case and briefly I would like to tell you what the defense is.

The defendant Coleman will prove to you, ladies and gentlemen, that he had nothing to do with the larceny of these articles that have been mentioned here today.

He will prove to you that on the day in question he couldn't possibly have been near where these articles were by the establishment of the time that we will bring to your attention.

He will prove to you that if these articles were taken from the car, they were taken by someone other than himself and by someone other than the defendant Campbell.

He will prove to you that on the day in question he did go to this
140 used car lot and that a car was put at his disposal because a car was to be purchased; that he went with the witness Robinson to the Southwest section of Washington; and that, for the first time, he learned there were articles in the back of the car when the police officer stopped Mr. Robinson who was traveling without lights.

And that is exactly what happened as far as he is concerned and, I believe, as far as Mr. Campbell is concerned.

Now, when we prove this to you, ladies and gentlemen of the jury, we will then ask you to bring in a verdict of not guilty.

OPENING STATEMENT ON BEHALF OF DEFENDANT
CAMPBELL BY MR. HERRICK

MR. HERRICK: May it please the Court, ladies and gentlemen of the jury: On behalf of the defendant Campbell, what we will show to you is this:

We will attempt to account for all of his time during that day. You will recall, of course, Mr. Cotton's testimony that the missing articles

were taken from his car sometime on January 13th. So, we will account for Mr. Campbell's time during that day, as follows: He had breakfast and lunch and spent the entire morning at Coleman's apartment. They lived in the same apartment house.

141 We will show, not only through them, but through Coleman's wife that they left about 2:30 to go to take some clothes to the cleaners. They did that. We will produce the cleaners' ticket which they still have. They were on foot.

We will show you that although they live and started out from Anacostia over near St. Elizabeth's Hospital, went to the cleaners, they arrived at a friend's house, one Myrtle Butler, around 3:00 or 3:30 that day. They did not have a car. They stayed there for an hour or an hour and a half. We will produce Myrtle Butler to testify here.

They then went to a movie. We will identify the time and place of that.

Sometime after they left the movie or, I think, immediately after they left the movie, they then went out to this car lot where Campbell was interested in purchasing a second-hand car.

At that point, they were driven to various places by the witness Robinson, and we will show to you that they did not know this material or these items were in the back seat of the car they were riding in. They did not put the items in the back seat and they did not know that they were there until the officers questioned them about them.

* * * *

149

PHILIP COLEMAN

* * * *

DIRECT EXAMINATION

BY MR. GORDON:

* * * *

150 Q. After you went to this lot, did you get into a car with anyone?

151 A. Yes; after Campbell got through talking to Robinson's boss about paying down on a car, Campbell asked me did I have any money. I said, "I got a couple dollars on me." He said, "Will you lend it to me?"

So I gave him that.

Then he asked me did I know where I could borrow some. I said, "Sure." Then he asked me where and I told him from a friend in South-east where I could borrow some money.

Q. Did you get in a car? A. After Robinson's boss told him to drive us down to get the money. I got in and Campbell got in. Robinson was driving.

On the way down, Robinson said he was going to make a stop at a liquor store. Campbell got out and got three cans of beer. We didn't have a can opener so he said he was going to make another stop. So he went on down and made a stop at 6th Street and G.

Q. Is that Southwest? A. Yes, sir.

Q. Robinson made this stop? A. Yes, sir.

Q. How long was he stopped? A. Well, he--I wouldn't exactly know. About five minutes, I would say.

152 Q. Then where did he go? A. Me and Campbell, I said I was going up the street and get a can opener from my brother's girlfriend's house. Campbell said, "Wait and I'll go with you." So we went up the street together, and then we came back without the can opener.

Q. How long were you gone? A. We were gone maybe two or three minutes.

Q. Where was Robinson during this time? A. He was in the car.

Q. Was he awake or was he asleep? A. He was awoke.

Q. When you got back to the car, what did you do? A. I got in the middle; Campbell got on the end. Then we pulled out. The officer, he stopped Robinson and asked him about his lights.

Q. Asked Robinson? A. Yes, sir.

Q. Go on. A. Then asked to see his registration card and his permit. Then he asked him who did he have in the car with him. He said two guys who was going to buy a car from his boss. So then the officer said, "Don't move, you are under arrest."

153 Q. Did you ask him why you were under arrest? A. No, sir. Then as the officer had a flashlight shining in the window and asked whose stuff

that was, that's when I looked back and Campbell looked back. Robinson said it was ours and I said it wasn't. I don't think the officer heard me.

The officer said, "Well, if the stuff is stolen, I'll have to hold you down at the precinct; if it's not, I'll turn you loose."

So, me and Campbell got out of the car and they put us in a squad car and they took us down to the station, and Robinson drove the car behind.

Q. Now, had you seen these articles prior to their being brought to your attention by the officers? A. The first time I seen them was when the officer shined the light back there.

MR. GORDON: I have not further questions.

* * * *

BY MR. HERRICK:

Q. Mr. Coleman, were you taken to the jail that night? A. No, we was brought down to No. 1.

154 Q. And you spent the night there? A. Yes, sir.

Q. Did you have some conversation with Robinson? A. Yes, sir.

Q. Could you tell us what Robinson said, what that conversation was? A. Well, he told me the same conversation twice. Down at No. 4, on the way up the steps, he said to tell the people he had nothing to do with it and he will tell the people the stuff belonged to his boss.

Q. Did he threaten you in any way? A. Over at the jail, he did.

Q. All right. Tell us about that. A. Well, when we got over to the jail he wanted me to sign a statement but I wouldn't--I was about to sign it. He kept saying he was going to get me out and all that, you know. And he said if I don't sign it, he would have me bumped off and Campbell bumped off; telling he was a racketeer and big time, big time gangster. Then practically every day he would go downstairs to the visiting room and when he come back, he said he went to see his Congressman. And he come back up--

THE COURT: He went to see what?

THE WITNESS: He went to see his Congressman. Then he come

back up. So, he kept on saying he were going to tell the people that he
155 had nothing to do with it; that he was going to drop the weight on us.
And at that time, the whole time he was talking, the house man he was
around.

BY MR. HERRICK:

Q. Did he say anything about Ohio that you recall? A. Yes, sir.

Q. What was that? A. He say he was some kind of racketeer up
there and bumped off officers up there.

Q. I'm sorry, I didn't hear that last statement. A. He said he
was a racketeer up there and he bumped off officers up there. And he
asked me, he said, "Well, if you get out of this, I've got a job I want
you to help me pull." And I told him, "I'm not pulling no job." Then I
asked him what it was. He said, "A liquor store."

Q. Did he say where? A. He said over in Northeast somewhere.
He told me to stay with him. He kept influencing my mind.

* * * *

Q. Now, did you ever sign or give a statement which exonerated
Robinson? A. I gave one, but I was persuaded.

156 Q. All right. Now, what is the name of this movie? A. It was a
picture about a spider.

* * * *

Q. Now, what did you do with your ticket stubs? A. When we
left out, we had them in our pocket. When the officers picked us up,
we took them over to the jail with us. They was in the pockets, but I
don't know what they did with them.

Q. Now, did you try later to find those stubs? A. Yes.

Q. What did you do? A. I went through the pockets. We take
our clothes off up at jail and when we come to court, they usually clean
them.

Q. Did you have some valuables that were taken from you and
placed in an envelope? A. Yes.

157 Q. Did you have an opportunity to go through that envelope?
A. No.

Q. You don't know what became of those ticket stubs? A. No.

* * * *

CROSS EXAMINATION

BY MR. O'MALLEY:

Q. This envelope is at the District of Columbia Jail held by the Superintendent of the jail or his clerk, is it not? A. Yes, sir.

Q. And the Metropolitan Police Department has nothing whatsoever to do with that property over there, does it? A. No, I don't think.

Q. And you have no doubt that if you made a claim for that property for investigating purposes or the like that they could be returned to you? A. Maybe, I don't know.

Q. Did you ask the prison authorities to have your envelope returned to your with your valuables in it? A. No, I didn't.

Q. Did you ever make a request of your lawyer that he make such a request? A. Yes.

* * * *

160 Q. Now, what was your purpose in getting that ride in the automobile? A. Well, the boss sent us down to pick up the money to pay down on the car.

Q. By "the boss", you mean Mr. Robinson's boss? A. Yes.

Q. That is the man from whom Campbell was going to purchase an automobile? A. Yes.

Q. And he apparently told him that if he wanted to buy the automobile, he had to go and get the down payment? A. Yes.

Q. And you told him that you could get a down payment for him down at Southwest? A. Yes.

Q. Where? A. At a friend's place.

Q. Where? A. Down at 4th and O.

161 Q. You told Robinson to drive you down to 4th and O or you asked him, didn't you? A. Well, that's where we told him that we were going to pick up the money.

Q. And you asked him to take you down there? A. I didn't ask him; the boss asked him.

Q. The boss asked him? A. Yes.

Q. All right. En route, apparently, he stopped at a liquor store and bought three beers? A. Yes.

Q. Where was that liquor store? Seventh Street? A. No. It was located in Southeast, between 11th and K.

Q. When you came out of there, Campbell suggested that he could get an opener where? A. No, I did.

Q. Where did you suggest you could get an opener? A. Well, it was on G Street.

Q. Where? A. About--Well, it was on 6th Street. It was down on the corner.

Q. Sixth Street what? A. Southwest.

162 Q. What block? A. I don't know what block.

Q. And who lived there? A. My brother's girlfriend.

Q. Your brother's girlfriend? A. Yes.

* * * *

Q. Well, did you ever get the opener? A. No.

Q. Nobody was home where you going to get the opener? A. I don't know if nobody was home or not, but I knocked on the door.

163 Campbell was with me.

Q. Where was that? A. It was on G Street.

Q. Where was that? A. That was on 6th and G when we went to get the opener--I say, 7th and G.

Q. 7th and G, Southwest? A. Yes.

Q. Who lived there? A. My brother's girlfriend.

Q. And you knocked on the door and nobody was home? A. I don't know if anybody was home or not.

Q. What did you do? A. I just knocked for a while and then we came back to the car.

Q. Then did you try some place else to get a can opener?
A. No.

Q. Then you got in the car and proceeded a little ways and that's when the police officers came, is that right? A. Yes.

Q. Now, when you first got in the automobile at Bennings Road, at the car lot, there was lighting in the lot, was there not? A. Yeah, but
164 where the car was sitting, it was dark.

Q. When you got in the automobile, you didn't notice anything piled in the back seat, did you? A. I never paid the back seat no mind; I just got in.

Q. You got in the middle? A. Yes.

Q. You didn't see anything on the front seat? A. If there was something in the front seat, I probably sat on it; I wasn't paying no mind.

Q. Did you see anything on the front floor? A. No.

Q. And when you got to the liquor store, who got out to get the beer? A. Campbell.

Q. When Campbell got out of the car, did the dome light in the car come on? A. No.

Q. And you didn't look in the back to see if anything was back there? A. No.

Q. There came a time when Campbell came back with the beer and the door was opened but the dome light didn't come on? A. No.

165 Q. And you again didn't take that opportunity to see what was piled up in the back of the car, if anything? A. It wasn't my business what was in the car; I was just getting a ride down.

Q. And then you went to get the opener, again the door was opened and no dome light came on in the car? A. No.

Q. And again you didn't notice whether anything was in the back seat of the car? A. No.

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178

RAYMOND A. CAMPBELL, JR.

* * * *

DIRECT EXAMINATION

BY MR. HERRICK:

* * * *

179 Q. Mr. Campbell, do you have a criminal record for larceny?
A. Yes, I do.

Q. And, when was that? A. It was in '59; I don't recall what month.

Q. It was in the fall of '59, was it not? A. Yes, sir.

Q. Did you plead or were you convicted? A. I pleaded.

Q. And what was your status on January 13, 1960 with respect to that conviction? A. Could you make yourself a little plainer, I don't understand?

180 Q. Did you go to jail or were you placed on probation? A. The first grand larceny?

Q. Yes, after your conviction. What was your sentence? A. One to three.

Q. Were you placed on probation? A. Suspended, three years probation.

Q. So, you were on probation on January 13, 1960? A. Yes.

* * * *

184 Q. You were telling us about leaving the used car lot. How did you leave and with whom? A. We left with William Robinson.

Q. And how? A. In a '59 Plymouth.

185 Q. And for what purpose did you leave? A. For the purpose of going to Southwest to a friend of his to borrow some money.

Q. To buy a car? A. Yes, sir.

Q. All right. Now, who was driving? A. Robinson.

Q. Where did you and Coleman sit? A. Coleman was in the middle and I was on the end.

Q. Did you look in the back seat? A. No, sir.

Q. Do you know whether or not there was a pile of clothes in the back seat? A. No, sir; not until the police arrested us.

Q. Where did you first go? A. We first stopped at New Jersey and K Street, Southeast.

Q. Why? A. Because Robinson wanted to get some beer.

Q. Did you get the beer? A. Yes, sir; I went in myself and got it.

Q. How much? A. Three cans.

186 Q. Did you drink it? A. No, sir.

Q. Why not? A. Because we couldn't get an opener.

Q. What finally became of the beer? A. Well, I guess the police drank it up, we never did drink it up.

Q. Where did you go after you got the beer? A. Well, we left there and Coleman suggested maybe his girlfriend we could get an opener from her. So, Robinson said, "Okay", because we wanted to drink the beer before we got back to the lot. So, I got out of the car with Coleman and we went to this door and knocked on the door.

Q. Where was this? A. This was on 6th or 7th Street--I'm not familiar with those streets there.

Q. Were you able to get the opener? A. No, sir.

Q. Did you try? A. Yes, sir.

Q. What happened? A. There was no answer at the door.

Q. Who went to the door? A. We both did.

187 Q. You and Coleman? A. Yes, sir.

Q. Where did Robinson go? A. He was sitting in the car.

Q. How long do you estimate that you were gone from the car?

A. I don't know, about five or ten minutes, something like that.

Q. Did you then go back and get in the car? A. Yes, sir.

Q. Where did you go after that? A. Well, he say he had to make a stop--

Q. When you say "he", who is that? A. Robinson.

Q. Did he say what he had to stop for? A. No, sir, he didn't.

Q. Where did he go? A. Up the street from there.

Q. Up the street? A. Yes.

Q. And he again stopped? A. Yes, sir.

Q. Did anybody get out at that point? A. I did and he did--

188 Q. Just a minute. Who is "he"? A. Coleman.

Q. The two of you got out. What did you do? A. I had to go--
I went to the side of the street to urinate.

Q. Did you come back to the car then? A. Yes, sir.

Q. Did Coleman come back with you? A. Yes, sir.

Q. Did you bring anything with you? A. No, sir.

Q. What happened after that? A. Well, the police come and stopped us and asked Robinson did he know he had the lights off. And he told him, no he didn't know it.

Q. Did the officers speak to you and Coleman? A. Yes.

Q. What did they say? A. One was standing on the running board outside. He told us, "Don't move."

Q. Now, did the time come when some things were discovered in the back of the car? A. Yes, sir, after he got the spotlight and shined it on the back seat.

189 Q. When you say "he", who is that? A. The arresting officer.

Q. All right. He got the spotlight and what happened? A. He shone it back there and seen the stuff and asked whose was the stuff. And Robinson said it was ours. Coleman said, "You shouldn't have said that, it's not ours."

Q. Was it yours? A. No, sir.

Q. Had you put it there? A. No, sir.

Q. When was the first time you saw it? A. When he put the light back there.

Q. And you then looked around? A. Yes, sir. It was time to look then.

Q. Do you in fact know where those things came from? A. No, sir, I don't.

Q. Had you put them there? A. No, sir.

Q. Had Coleman put them there, so far as you know? A. No, sir.

Q. Had you stolen those things from an automobile? A. No, sir.

* * * *

190 Q. Now, directing your attention to--Did you later have some conversations with Robinson? A. Yes, sir.

Q. Would you tell us about those, where they were? A. Well, first time, had conversation at No. 4. Do you want me to tell what he

said?

Q. Yes. A. He said to get him out of it and put it on his boss because his boss had a couple of hot cars on the lot.

Q. Go ahead. A. So, the detective, "What do you mean he had a couple hot cars on the lot?" He said, "I don't know. Man, he's got a couple cars on the lot that don't have no title for them. I don't know whether they are hot or not."

So, they took us up for a line-up and carried us over to the District Jail.

Q. Did you have another conversation with Robinson at the jail?

A. Yes, sir.

Q. What was that conversation? A. Well, he started off, said, "Man, if we stick it on the boss, we can all get out of it. We wouldn't be involved--nobody would be involved because, he said, because the
191 police didn't have no proper cause to arrest us. So, he said he was going to see Mr. Stokes, Assistant Superintendant over at District Jail, to sign an affidavit.

Q. Did he ask you to sign an affidavit? A. Yes, sir.

Q. To what effect? A. Denying he know anything about it.

Q. And did he threaten you in any way? A. Yes, sir, two or three times.

Q. What were those threats? A. He told me if I didn't leave Coleman and him alone and if I didn't sign the statement, that he was going to have me bumped off.

Q. Did he use the language about dropping the weight? A. Yes.

Q. What was that? A. He said both of us we was fools, we didn't know nothing was there but he said he was going to drop the weight on us anyway so we better sign the statements.

Q. Did he say anything about Ohio? A. Yes, sir; he said he used to work with a gang in Ohio where they used to run rum and whiskey back and forth and carrying 45's on the side, and told us if we sign the statement and he gets out, he would get us out on bond and we could go
201 to Ohio and he would get us a job.

Q. Did he say anything about a Congressman? A. Yes, sir; a thousand times.

Q. What did he say? A. Well, every time he would go downstairs to see someone--I don't know who--he'd say he went down to see his Congressman. He said he could help. He said the last time he talked to him before he got transferred to CP-1, he said he would be out the next morning at 8:30.

* * * *

211 Q. From the time you got into the car at Ben's Auto lot until the police stopped you in the 700 block of 6th Street, Southwest, have you ever seen Robinson away from the automobile? A. Have I seen him away from the car?

Q. Yes. A. No.

Q. Then would it be fair to assume that the clothing was in the car at the time it left Ben's Auto lot, according to your testimony? A. I don't know when it was put in there.

* * * *

214 THE COURT: Did you ever see a camera on the floor in the front seat of the car, or a camera case?

THE WITNESS: No.

* * * *

215

CLEVELAND BARR

* * * *

DIRECT EXAMINATION

BY MR. HERRICK:

* * * *

Q. Are you presently at the District Jail? A. That's right.

Q. What are you there for? A. Petit larceny.

Q. Do you know the defendant Campbell? A. Sure.

Q. Do you know the defendant Coleman? A. Sure, I do.

Q. Do you know William Robinson? A. Sure, I do.

216 Q. Now, did you hear a discussion between Robinson and Coleman and Campbell after they were at the jail? A. That's right,

I did.

Q. Would you tell us what that was about, what was said? A. Well, this fellow Robinson he was in my dormitory. They were discussing what they were in jail for and he goes on to tell them about that he would drop the weight on them; that he is a gangster and he is a racketeer; and if they didn't sign the papers to get him out, that they would be bumped off--and a lot of stuff.

Q. Did he talk about his Congressman? A. Yes, he said he seen his Congressman a couple of times and that his Congressman was going to spring him out and get him out and he would go back to Chicago and get into business.

Q. Did he say what kind of business? A. Well, he said it was liquor, rum or whiskey or something. I don't know, it could have been wine.

Q. Did he say anything about hot cars? A. All I heard him say is he could get rid of some cars, that's all.

Q. Now, you said they were in your dormitory. Do you have some position down at jail? A. That's right.

217 Q. What is that? A. I take care of the whole dormitory. Anything that is going on--Anything that is done, I see that it's did right. I see that the dormitory is cleaned up. If I see there is any discussion or fight or anything that goes wrong, I report it to my officer.

Q. You are what is known as a trustee, is that it? A. That's right.

Q. As a result of that argument between these three men that you have described, did you do anything? A. Sure, I did.

* * * *

Q. Yes, speak up. A. Well, in the dormitory, these fellows got to talking. So I goes to the sergeant and tells him we better separate these fellows before there be a fight. The sergeant and I got together and he moved one of the boys, this Robinson boy.

218 Q. He moved Robinson out of the dormitory where the other two were? A. That is correct.

* * * *

CROSS EXAMINATION

BY MR. O'MALLEY:

* * * *

219 THE COURT: Did you report to the sergeant that you had a man in your dormitory who claimed to be a dangerous gangster?

THE WITNESS: I did.

THE COURT: What sergeant was that?

THE WITNESS: Kirkpatrick.

THE COURT: Sergeant Kirkpatrick?

THE WITNESS: Yes, sir.

THE COURT: Just what did you tell him?

THE WITNESS: Well, I told him about these fellows arguing about the case. The boy saying he was going to have them bumped off. And I talked to him, so he said, "I better move these fellows." So, he moved this fellow Robinson out into another place.

THE COURT: Did you tell him that Robinson claimed to be a gangster?

THE WITNESS: I mean, he heard part of it himself.

THE COURT: Sergeant Kirkpatrick did?

THE WITNESS: Indeed he did.

* * * *

221 THE COURT: Do you have any prayers?

MR. HERRICK: With respect to the instruction counsel has mentioned with respect to recent possession, I think that is a proper instruction but I think it should be--the jury should be advised, of course, that it applies just as much to Robinson as it does to the other two boys. It has to be in exclusive possession.

THE COURT: It doesn't have to be exclusive, it can be joint possession.

222 MR. HERRICK: I think it must be pointed out that they were not the exclusive possessors of this property, allegedly stolen property.

THE COURT: I don't get that.

MR. O'MALLEY: May I be heard on that point, Your Honor?

THE COURT: I don't think it is necessary.

MR. O'MALLEY: I am of the opinion it does have to be exclusive possession.

THE COURT: What you mean is it has to be exclusive possession of both or all three?

MR. O'MALLEY: Joint exclusive possession as regards these two defendants. He is talking about Robinson.

MR. HERRICK: I am saying Robinson has as much possession as they did.

MR. O'MALLEY: Our testimony is they had it and brought it out of the house and put it in the car, they had it in exclusive possession.

THE COURT: Suppose the jury believes all three of them stole it? Then still the two defendants were guilty.

MR. HERRICK: Suppose they believe Robinson stole it?

THE COURT: Then these two people don't have it in their possession.

MR. HERRICK: I have no objection to it so long as it is given in
223 such a way so that the jury will understand.

THE COURT: If these people were passengers in the car only, of course, they wouldn't be guilty; but the jury isn't that stupid.

MR. HERRICK: I think I can perhaps cover it in argument. I have heard this instruction many times, I am sure.

THE COURT: This is the instruction which I shall give to the jury on possession of recently stolen property:

You are further instructed that if you find that either of the defendants, or both of them, had in his possession, actual or constructive, any of the property recently taken from the automobile of the complaining witness, and such possession has not been explained to your satisfaction, then you may infer therefrom the guilt of such defendant or defendants of the charge.

If, however, the explanation of such possession satisfies you, then, of course, you will not so infer. In this connection you

MR. HERRICK: That takes care of it I think. I have no objection.

* * * *

ROBERT L. KIRKPATRICK

* * * *

BY MR. O'MALLEY:

* * * *

sir.

Q. And Raymond A. Campbell? A. Yes, sir.

Q. Did Cleveland Barr have some specific duty in the cell block distinguished from the other inmates? A. Yes; he was assigned as houseman, we call it, in the jail. Houseman to take care of upkeep and cleaning, routine work.

Q. Now, did you ever hear Mr. Robinson make any statement in a threatening or menacing manner in any regard as to Coleman and Campbell, the defendants? A. No, sir.

* * * *

229

CROSS-EXAMINATION

BY MR. HERRICK:

Q. Sergeant, did you ever talk with Campbell and Coleman and Robinson together? A. No, sir.

Q. Did you talk with them separately? A. Yes, sir.

Q. Was that as a result of a conversation that you had with Cleveland Barr? A. Yes, sir.

Q. Did he make a recommendation to you? A. He came to me and--

Q. Never mind what he told you. Did he make a recommendation to you? A. Yes, sir.

Q. And as a result of your conversation with Barr and those three men, did you take some action with respect to Robinson? A. Well, in our way, yes.

Q. What was done? A. The following day Robinson was transferred to Dormitory CB-1.

MR. HERRICK: I have no more questions.

REDIRECT EXAMINATION

BY MR. O'MALLEY:

230 Q. The transfer was solely on the recommendation of Cleveland Barr, and through no personal knowledge of your own? A. It was my recommendation to the Day Captain, not Cleveland--

Q. Your recommendation that they be separated? A. Yes, sir.

Q. But that recommendation was made on the report you got from

Cleveland Barr? A. Partly. Some of it was my own.

RE CROSS-EXAMINATION

BY MR. HERRICK:

Q. Your own being based on your own conversation individually with these three men? A. My interrogation of the three men.

THE COURT: Did Barr ever tell you that Robinson was representing himself as a gangster?

THE WITNESS: Not words of gangster, no, sir.

THE COURT: Did he say that Robinson said that he had killed some people, or killed a policeman?

THE WITNESS: I heard the rumors; he didn't tell me that, no, sir.

THE COURT: Where did you hear rumors from?

THE WITNESS: Within the dormitory where we have possibly two hundred to four hundred inmates. He had said those words in the dormitory, but I didn't hear them directly.

231 THE COURT: Did Barr report them to you?

THE WITNESS: Not only Barr, but other inmates, but I can't call their names.

* * * *

RE CROSS-EXAMINATION

BY MR. GORDON:

Q. Sergeant, what was reported to you?

* * * *

THE COURT: Let me say this: I would like to caution the jury that these conversations have nothing to do with the guilt or innocence of anyone. They have only to do with credibility, as it may affect anyone's credibility. Go ahead.

* * * *

THE WITNESS: Well, it wasn't exactly reported to me. I heard it through conversations.

BY MR. GORDON:

Q. You heard what, sir?

232 THE COURT: It is competent insofar as it relates to Barr, or if he heard the conversations from Coleman, Campbell, or Barr, or from Robinson. Did you hear anything from any of those?

THE WITNESS: Yes, I have.

THE COURT: All right. You can say what you heard from them, and which one you heard it from.

THE WITNESS: Well, Cleveland Barr told me one time he was bragging about what he was going to do. He didn't say what he was going to do, or what he had done--he didn't tell me what he had done or anything like that.

BY MR. GORDON:

Q. Did you hear anything from anybody else? A. The same as what I said, bragging about what he was going to do to the two boys and for himself.

* * * *

233 RAYMOND A. CAMPBELL

* * * *

DIRECT EXAMINATION

BY MR. HERRICK:

Q. Officer Selby testified that while he was standing at the left side of the car either you or Coleman said that the clothing in the back of the car belonged to a friend in Northwest. Did you say that? A. No, sir.

Q. Did you hear Coleman say that? A. No, sir.

* * * *

234 PHILIP COLEMAN

* * * *

DIRECT EXAMINATION

BY MR. GORDON:

Q. Now, Mr. Coleman, you heard Officer Selby say that while he was standing next to the car he heard a voice say, "I got them from a friend in Northwest." Did you make any such statement? A. No, sir.

MR. O'MALLEY: No questions, Your Honor.

THE COURT: You may step down.

MR. HERRICK: That is all for the defense, may it please the Court.

THE COURT: All right. Any rebuttal?

MR. O'MALLEY: No, Your Honor.

* * * *

236 THE COURT: As a matter of fact, I don't think you need it. Let me see if I can remember. They could find the camera worth \$60.00--

MR. HERRICK: Or \$45.00.

THE COURT: Or \$45.00, but let's take it most favorable to the Government. They could find that \$60.00. There were twelve shirts and two and a half a piece, which is \$30.00.

MR. GORDON: They were bought three years ago.

THE COURT: That's all right. There were two boy's coats, \$10.00 each, or \$20.00. That is over a hundred dollars right there.

MR. HERRICK: Let's take it the other way. Suppose they find this one at \$45.00, and the coats, \$20.00, and let's say they assign a dollar each for the shirts.

THE COURT: Then they will find him guilty of petit larceny.

MR. HERRICK: Not if they add the coat in.

MR. O'MALLEY: I say this on the basis of Your Honor's mathematics: as far as the Government is concerned, they won't ask that the jury find any value on the coat.

236 THE COURT: All right, if you are willing to do that.

MR. GORDON: That eliminates that.

* * * *

MR. GORDON: Your Honor, one further thing: I would like at this time to renew my motion to suppress the evidence.

MR. HERRICK: I will join in this for the record.

THE COURT: And I will deny both of you for the record.

MR. HERRICK: I think we have that one covered.

THE COURT: I think you do.

(Thereupon, closing arguments were made by counsel for the Government and counsel for the Defendants, after which the Court charged the jury as follows:)

THE COURT: Ladies and gentlemen of the jury, this case has now reached that stage where it becomes my duty to charge you on the law of the case, which charge you are required to follow in exercising your duty to pass on the facts in this case.

Before going into the principles of law which must guide you in your deliberations, I want to discuss very briefly the participants in this trial and the functions which each of us has in the case.

237 Let us first consider counsel for the Government and counsel for the defendants. You first met them in the opening statements. The Government attorney made an opening statement as to what the Government expected to prove, and the defendants' attorneys at the opening of the defendants' case made a statement as to what the defendants expected to prove. These statements as to what counsel for the Government and counsel for the defendants expected to prove do not constitute evidence in this case. At the close of the case counsel for the Government and counsel for the defendants made what we refer to as summations to the jury. They, of course, did not undertake to discuss all of the evidence in the case, but they did discuss the evidence that constituted their recollection of that part of the evidence which they thought you should give special consideration to. If your recollection disagrees with their recollection, your recollection is controlling as you are the sole judges of the issues of fact.

Now we come to the function of the Court. It is my duty to conduct the trial of the case in an orderly and efficient manner, to rule upon question of law during the course of the trial, and finally to charge you with respect to the law which will control you in the determination of the issues of fact which you have to decide.

238 You are not to draw any inference, nor are you to be influenced, with respect to the guilt or innocence of the defendants, or either of them, by any ruling of this Court during the course of this trial. There

is nothing that the Court has said during the course of the trial or that will be said during this charge which should carry with it any suggestion as to how the Court feels this case should be decided, because, as I shall point out to you in a moment, you are the sole judges of the issues of fact in this case, and for me to suggest how you should decide the case would constitute an assumption of your prerogatives in the case. Again, you are the sole judges of the issues of fact which you must decide in this case. You must base your judgment on the evidence which you have heard from the witness stand, the exhibits which have been received in evidence, and the inferences which are reasonable deducible from that evidence, that is, the testimony and the exhibits. I repeat again, you are the sole judges of the issues of fact. That is your sole responsibility and no one else can share it with you.

These defendants have been indicted, charged with grand larceny. A little later on I shall read the indictment to you, but I wish to say and emphasize at this point that the fact of their indictment raises no inference of guilt. The indictment is the method whereby the defendants are brought to trial and by which they are informed of the charges made against them. It is not evidence in this case.

239 Every defendant in a criminal case is presumed to be innocent, and this presumption of innocence attaches to a defendant throughout the trial. The burden is on the Government to prove the defendants guilty beyond a reasonable doubt. And if the Government fails to sustain this burden, then you must find the defendants not guilty.

You may well ask what is meant by the phrase a reasonable doubt. It does not mean any doubt whatsoever. Proof beyond a reasonable doubt is proof to a moral certainty and not necessarily proof to a mathematical certainty. A reasonable doubt is one which is reasonable in view of all the evidence. Therefore, if, after impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied with the guilt of the defendants, or either of them, then you have a reasonable doubt. But if, after such impartial comparison and consideration of all the evidence and giving due consideration to the pre-

sumption of innocence which attaches to the defendants, you can truthfully say that you have an abiding conviction of the defendants' guilt, such as you would be willing to act upon in the more weighty and important matters relating to your personal affairs, then you have no reasonable doubt. The term reasonable doubt means a doubt for which a good reason
 240 can be given in the light of all the evidence. It means a doubt which is substantial and not merely shadowy. It does not mean a doubt which is merely capricious or speculative.

In determining whether the Government has established the charge against the defendants beyond a reasonable doubt you will consider and weigh the testimony of all the witnesses who have testified before you, and all the circumstances concerning which testimony has been introduced. You are the sole judges of credibility of witnesses. In other words, you and you alone are to determine whether to believe any witness and the extent to which any witness should be credited. In case there is any conflict in the testimony it is your function to resolve the conflict and to determine where the truth lies.

In reaching a conclusion as to the credibility of any witness and in weighing the testimony of any witness, you may consider any matter which may have a bearing on the subject. For instance, you may consider the demeanor and the behavior of the witness on the witness stand, the witness' manner of testifying, whether the witness impresses you as a truthtelling individual, whether the witness impresses you as having an accurate memory and recollection, whether the witness has any motive for not telling the truth, whether the witness had full opportunity to observe the matters concerning which the witness has testified, and whether the witness has any interest in the outcome of this case.

241 If you find that any witness willfully testified falsely as to any material fact concerning which the witness could not have possibly been mistaken, you are then at liberty, if you deem it wise to do so, to disregard the entire testimony of such witness, or any part of the testimony of such witness.

In this case there has been testimony as to the criminal record of

the defendant Campbell. I should tell you that this was admitted in evidence solely for your consideration in passing on the credibility of Campbell. It was not received as having any bearing upon whether Campbell, or either of the defendants in this case were guilty of the charge now made against them. The only reason for receiving it, the only reason it could be received was because it might have some bearing on Campbell's credibility as you pass upon that credibility.

The indictment in this case reads as follows:

"On or about January 30, 1960, within the District of Columbia, Philip Coleman and Raymond A. Campbell, Jr., stole property of Robert M. Cotton, of Julia R. Cotton, of Robert W. Cotton, and of Richard S. Cotton, of the value of about \$358.50 consisting of the following:

242 "One sweater of the value of \$10.00; one sweater of the value of \$2.50; twelve shirts, each of the value of \$2.50; one suitcase of the value of \$8.00; one camera of the value of \$175.00, property of Robert M. Cotton. One coat of the value of \$75.00; one bathrobe of the value of \$5.00; eight sweaters, each sweater of the value of \$2.00; one hat box of the value of \$2.00; three hats, each of the value of \$5.00, property of Julia R. Cotton. One coat of the value of \$10.00, property of Robert M. Cotton; one coat of the value of \$10.00, property of Richard S. Cotton."

At this time the Court instructs you that under the evidence of this case the items which you may consider, and the only items which you may consider, are the camera and camera case, the twelve shirts, and the two coats, one belonging to Robert M. Cotton and one belonging to Richard S. Cotton.

The section of the District of Columbia Code dealing with grand larceny reads:

"Whoever shall feloniously take and carry away anything of value of the amount or value of \$100.00 or upward," shall be punished as herein provided.

The words "feloniously take and carry away" mean merely that the property must have been unlawfully taken by the defendants from the possession of another, in this case, from an automobile belonging to Cotton, with intent to appropriate it to their own use. Thus, in order for you to find the defendants, or either of them, guilty of grand larceny

243 under the count of this indictment, you must find that the Government has proved beyond a reasonable doubt that the defendant, or each of them, took from the Cotton's car the property in question. Two, that they did so unlawfully and with intent to convert it to their own use. And, three, that the property was of the value of \$100.00 or more.

If you find that the Government has failed to prove any one or more of these elements, then you cannot find the defendants guilty of grand larceny.

However, if you find that the defendants, or either of them, took the property, took it unlawfully, and with intent to convert it to his own use, but find the value has not been proved to be \$100.00 or more, then you may find that defendant, or both defendants if you so find, guilty of petit larceny.

You are instructed that if you find that either of the defendants had in his possession, actual or constructive, or both defendants had in his possession, actual or constructive, or both defendants, any of the property recently taken from the automobile of Cotton, and such possession has not been explained to your satisfaction, then you may infer therefrom the guilt of such defendant, or defendants, or the charge.

If, however, the explanation of such possession satisfies you, then, of course, you will not so infer. In this connection you are in-

244 structed as a matter of law that possession means not merely actual physical possession, but includes constructive possession as well. Constructive possession occurs when a person does not have within his hands or grasp the articles in question, but does have dominion and control over the article. Thus, if you find in this case that the defendants, or either of them, put the property in the car which was being driven by

Robinson, and claimed dominion and control over it as their property, then you would find that they did in fact have possession of the property.

If, on the other hand, you should find that they did not put the property in the car, did not claim dominion and control over it, if you should find Robinson in fact put them in the car, then the mere fact that these defendants, or either of them, were riding with Robinson would not be dominion and control over the property.

* * * *

246 MR. HERRICK: Your Honor, the very last thing you said there, if they should find Robinson put the clothes there, then, of course, he would be the one who had possession. If they should find Robinson, or anyone else, put the clothes there, of course, that would exonerate our boys--

THE COURT: Well, that would be true, but from the evidence in this case I don't think there is any indication whatever.

MR. HERRICK: Well, of course, our position is, as Tom pointed out, it must have been there when they got in the car.

THE COURT: If you want me to instruct them that way I will, but I don't think it amounts to anything in view of the facts in this case.

MR. HERRICK: Well, all right.

(In open court:)

THE COURT: Ladies and gentlemen, you are directed that your verdict must be the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous. It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must

247 decide the case for yourself, but do so only after a consideration of the evidence with your fellow jurors.

In the course of your deliberations do not hesitate to change an opinion when convinced it is erroneous, but do not surrender your honest convictions as to the weight or the effect of the evidence solely because of the opinion of the other jurors or for the mere purpose of returning a

verdict.

In this case you must return a verdict as to each defendant, and that must be returned separately.

You have three possible verdicts as to each defendant. One would be guilty as charged, which would mean guilty of grand larceny. Or, two, guilty of petit larceny. Or, three, not guilty. * * * * *

* * * * *

248 THE DEPUTY CLERK: Will the foreman please rise? Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: Yes, we have, sir.

* * * * *

THE DEPUTY CLERK: What say you as to defendant Raymond A. Campbell, Jr. on the indictment?

THE FOREMAN: The jury finds Raymond A. Campbell guilty of petit larceny.

THE DEPUTY CLERK: Members of the jury, your Foreman says you find the defendants, Philip Coleman and Raymond A. Campbell, Jr., guilty of petit larceny, and that is your verdict so say you each and all.

THE COURT: You may sit down.

MR. GORDON: Your Honor, I ask that the jury be polled.

THE COURT: All right. Go ahead.

MR. HERRICK: May I join in that and have them both polled at once?

THE COURT: All right.

* * * * *

249 (Thereupon, the jury was polled as to each defendant, each juror answering "guilty of petit larceny" as to each defendant.)

* * * * *

[Filed April 7, 1960]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES)

vs.)

1. PHILIP COLEMAN)

2. RAYMOND A. CAMPBELL,)

Jr.)

Defendant)

Criminal No. 103-60

Charge: Grand Larceny;
Petit Larceny

On this 7th day of April, 1960, came again the parties aforesaid, in manner as aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon the Court denies each defendant's motion for judgment of acquittal; thereupon the case is respited until 10:00 a. m. , tomorrow.

The defendant, Raymond A. Campbell, Jr. , is remanded to the District of Columbia Jail.

Present:

United States Attorney

By Thomas O'Malley
Assistant U. S. Attorney

Eva Sanche
Official Reporter

By direction of

George L. Hart, Jr.
Presiding Judge
Criminal Court #4

HARRY M. HULL, Clerk

By /s/ Alan B. David
Deputy Clerk

[Filed April 8, 1960]

On this 8th day of April, 1960, came again the parties aforesaid, in manner as aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon the said jury, after hearing further of the evidence, and the instructions of the Court, retire to consider their verdict; thereupon the said jury upon their oath

say that each defendant is guilty of petit larceny; and whereupon each and every member of the jury is asked if that is his or her verdict and each and every member thereof says that each defendant is guilty of petit larceny.

The case is referred to the Probation Officer of the Court and the defendant, Philip Coleman, is committed to the District of Columbia Jail and the defendant, Raymond A. Campbell, Jr., is remanded to the District of Columbia Jail.

By direction of

George L. Hart, Jr.

Presiding Judge
Criminal Court #4

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[Filed May 23, 1960]

JUDGMENT AND COMMITMENT

On this 20th day of May, 1960 came the attorney for the government and the defendant appeared in person and by counsel, Philip F. Herrick, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of

PETIT LARCENY under Count 1

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

One (1) Year; Said sentence to run consecutively to the sentence imposed in Criminal Case No. 816-59.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ G. L. Hart
United States District Judge.

[Filed May 27, 1960]

NOTICE OF APPEAL

Name and address of appellant Raymond A. Campbell, Jr.

D. C. Jail # 107, 246

Name and address of appellant's attorney

Offense Petty larceny

Concise statement of judgment or order, giving date, and any sentence

Sentenced on May 20, 1960, to one year, to run consecutively to revocation of probation on previous sentence.

Name of institution where now confined, if not on bail D. C. Jail

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

May 27, 1960

Date

/s/ Raymond A. Campbell, Jr.

Appellant

Attorney for Appellant.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15820

RAYMOND A. CAMPBELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

OLIVER GASCH,

United States Attorney.

CARL W. BELCHER,

FRANK Q. NEBEKER,

Assistant United States Attorneys.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED NOV 18 1960

Joseph W. Stewart

CLERK

No. 15820

QUESTIONS PRESENTED

In the opinion of the appellee the following questions are presented:

Where the arresting officer had received a report as to a stolen woman's fur coat, a suitcase, and other particular items, and in the same area, ninety (90) minutes thereafter they observed property of the same description in the rear seat of an automobile which they had lawfully stopped for being operated without lights a short distance from where it was first seen parked, with motor running, in an abandoned residential area—

Was the arrest and incident seizure of the contraband proper?

II

Where the evidence from both sides failed to show the driver of the car, who was not charged, and who testified for the government, was corruptly associated with the appellant or his co-defendant in the commission of a crime—

Was it plain error, in the absence of a request, for the trial court to fail to instruct on accomplice testimony?

(1)

INDEX

	Page
Counterstatement of the case.....	1
Statutes involved.....	4
Summary of argument.....	5
Argument:	
I. The contraband was seized pursuant to the lawful arrest of appellant.....	5
II. The trial court need not have <i>sua sponte</i> instructed on ac- complice testimony.....	
Conclusion.....	

TABLE OF CASES

* <i>Bell v. United States</i> , 102 U.S. App. D.C. 383, 254 F. 2d 82, cert. denied, 352 U.S. 1017 (1958).....	5, 6
* <i>Bird v. United States</i> , 187 U.S. 118 (1902).....	8
* <i>Brinegar v. United States</i> , 338 U.S. 160 (1949).....	7
<i>Christensen v. United States</i> , 104 U.S. App. D.C. 35, 259 F. 2d 192 (1958), dissenting opinion by Bazelon, J., footnote 16.....	7
* <i>Egan v. United States</i> , 52 App. D.C. 384, 287 Fed. 958 (1923).....	8
<i>Head v. Commonwealth</i> , 310 S.W. 2d 285 (Ky., 1958).....	7
<i>Henry v. United States</i> , 361 U.S. 98, 4 L. 2d 134, 80 S. Ct. 168 (1959).....	7
* <i>Tomlinson v. United States</i> , 68 App. D.C. 106, 93 F. 2d 652 (1937).....	8

OTHER REFERENCES

1 Words and Phrases (Permanent Ed.) p. 456.....	7
Rule 52(b), Federal Rules of Criminal Procedure.....	5, 8

*Cases and authorities chiefly relied upon.

2000

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15820

RAYMOND A. CAMPBELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This is an appeal from a conviction of petit larceny under an indictment for grand larceny filed February 1, 1960 (J.A. 1, 86). The judgment and commitment was filed on May 23, 1960 under a verdict returned on April 8, 1960. Appellant was sentenced to one year imprisonment (J.A. 85-86). Notice of Appeal was filed May 27, 1960 (J.A. 87).

The appellant and one Phillip Coleman were tried together on an indictment charging them with the larceny of assorted personal property belonging to Robert M. Cotton and the members of his family (J.A. 1). On March 1, 1960 appellant and his co-defendant filed a motion to suppress evidence (J.A. 2). On April 6, 1960 a hearing was held on that motion at the conclusion of which the court denied the relief sought thereunder (J.A. 4-27). According to the testimony of Officers Herman Steiner (J.A. 14), and Robert Selby (J.A. 19), on January 13, 1960 at about 7:30 P.M. they were in a scout car patrolling in the vicinity of the 700 block of 6th

Street, Southwest. While there they observed an automobile parked at the curb without lights (J.A. 14). There were three men seated in the front of the car and its motor was running (J.A. 19). Of particular significance to Officer Steiner was the unusual fact that in this particular block of 6th Street, Southwest, no one occupied or lived in the building (J.A. 14).¹ The officers continued down the street and observed the car pull away from the curb and follow the police car for about a block. While being operated the car did not have its lights on. It was nighttime. (J.A. 15, 20.) The police officers stopped the car and examined the driver's credentials. The driver was William F. Robinson. He took Officer Steiner to the rear of the automobile where the registration certificate was attached to a "dealer's" license plate. (J.A. 15.) While examining the driver's credentials and as he opened the door to get out to go to the rear of the car the officers observed through the use of their flashlights and the dome light of the car that the back seat contained a large amount of clothing and some suitcases. The items were piled all over the floor and the back seat. (J.A. 15, 20.) When Officer Shelby inquired as to how the occupants of the car came to have the items in the back he was told by either appellant or his co-defendant that they had obtained the clothes "from a friend in Northwest" (J.A. 20). Significant to both officers was the fact that within an hour and a half before they had overheard Mr. Cotton report at the precinct station the theft of numerous similar items from his automobile. Mr. Cotton had reported that his car had been parked in the 400 block of 8th Street, Southwest, which was four or five blocks from the area where appellant had been stopped. (J.A. 16, 21.) Of the items which Mr. Cotton listed in his report at the precinct station, the officers specifically remembered a lady's fur coat, a movie camera, a suitcase and men's and women's apparel (J.A. 16, 21). It was on this information that the officers placed the three men under arrest and transported them to the precinct station (J.A. 23).

When the defendant Coleman complied with a request to step from the car Officer Steiner observed a movie camera, ap-

¹ Apparently an area under the Southwest Redevelopment Plan.

parently in its case, between Coleman's legs on the floor (J.A. 15). With this testimony before it, the District Court denied appellant's motion to suppress (J.A. 27, 56).

At trial Officers Steiner and Selby testified to substantially the same facts as were adduced at the hearing on the motion to suppress (J.A. 45 & 49). In addition to the testimony of these police officers the Government provided the testimony of William F. Robinson, the driver of the automobile in question² (J.A. 33). Mr. Robinson testified that he was employed at the Ben Auto Sales, a used car business in the District of Columbia. It was his testimony that on the early evening of January 13, 1960 Coleman and the appellant came to the lot and that as a result Robinson was instructed by his superior to drive them to a location within the city so they could get a seventy-five dollar down payment for a car. (J.A. 33, 35.) He also testified that while on the way he was instructed to stop his car in the vicinity of 8th and D Streets, Southwest (J.A. 34). Coleman and Campbell then left the automobile and went around some houses and out of sight. They returned approximately ten minutes later and had with them the contraband which they placed in the back seat. (J.A. 35.) They explained to Robinson that they were moving and he agreed to help them (J.A. 35).

Coleman and Campbell got in the car again and Robinson drove the car around the corner and to a point on 6th Street which is near the precinct station. He was again commanded to stop and when he did either Coleman or Campbell got out. Upon the return, in about five or ten minutes, Robinson drove the car about a block further. He went around the patrol car and was instructed to stop again, the appellant having told him that appellant had dropped his hat "or something". With this Robinson stopped the car again. (J.A. 36.) According to Robinson he was stopped by the police after he again pulled from the curb, for the reason that there were no lights on the car (J.A. 37). At this point Robinson's testimony corresponded to that of Officers Steiner and Selby (J.A. 37, 38).

² Robert M. Cotton testified concerning the ownership, value and identification of the property involved (J.A. 28). Also called as an expert witness was Mr. Mark Weiss who testified concerning the value of the camera (J.A. 53).

Coleman and the appellant each testified that they went to the used car lot together and that in order to obtain the down payment for a car they were driven elsewhere by Robinson on orders from Robinson's superior. They testified that they stopped at a liquor store for some beer but that they had no opener so they again stopped at the home of an acquaintance for the purpose of obtaining an opener. It was after they left the area of the last stop that they were stopped by the police. (J.A. 59, 60 & 65, 66 & 67.) The appellant testified that the first time he saw the contraband in the back seat was when the officers shined his light in the back (J.A. 67). He also testified that he did not know from where the items came and that he knew Coleman had not put them there. He denied stealing them. (J.A. 67.) Coleman also testified that the first time he had seen these articles was when the Officers shined the light in the back of the car (J.A. 60). Each also testified that after the arrest Robinson attempted to convince them that they should tell the police that he had nothing to do with it and that he (Robinson) would then tell the police that the contraband belonged to his boss (J.A. 60, 68). Robinson denied that he engaged in the specific conversation with Coleman and the appellant as they subsequently described it but he did say that he told them that he was not going to be held responsible for a crime he did not commit (J.A. 43-44).

STATUTES INVOLVED

Title 22 District of Columbia Code § 2201, Supp. VIII (1960) provides:

Grand Larceny.—Whoever shall feloniously take and carry away anything of value of the amount or value of \$100 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years.

Title 22 District of Columbia Code § 2202, Supp. VIII (1960) provides in pertinent part:

Petit Larceny—Order of restitution.—Whoever shall feloniously take and carry away any property of value of less than \$100, including things savoring of the

realty, shall be fined not more than \$200 or be imprisoned for not more than one year, or both. * * *.

SUMMARY OF ARGUMENT

Appellant's contention regarding unlawfulness of his arrest, and the unlawfulness of the seizure of the contraband, is not well founded. The automobile was properly stopped for having no lights on at nighttime. Appellant remained in the car. The subsequent lawful observations of the contraband in light of the known recent and closely located theft thereof gave the officers more than enough probable cause to arrest the occupants of the car for the theft under *Bell v. United States*, 102 U.S. App. D.C. 303, 254 F. 2d 82, *cert. denied*, 352 U.S. 1017 (1958).

Appellant's contention that it was plain error under Rule 52(b), F.R. Cr.P for the trial court to have failed to, *sua sponte*, instruct on accomplice testimony is, likewise, not well founded. The testimony in this case, both from the prosecution and from the defense does not give rise to a situation where such an instruction would be required whether requested or not. The testimony of the witness Robinson showed him to be innocent of any corrupt action or knowledge regarding appellant's activities. Moreover, the testimony of appellant and the defendant Coleman failed to link Robinson in a corrupt way with them and the crime. They denied the theft altogether as well as any knowledge of the contraband. Under these circumstances such an instruction would not have been appropriate. The mere presence of Robinson in the car did not make out a setting calling for such an instruction, particularly where none was requested.

ARGUMENT

I

The contraband was seized pursuant to the lawful arrest of appellant

Appellant asserts (Br. 24) that the search and seizure was incident to an arrest made without probable cause. Moreover, appellant attempts to distinguish the instant case from *Bell*

v. *United States*, 102 U.S. App. D.C. 383, 254 F. 2d 82, cert. denied, 352 U.S. 1017 (1958) on the basis that in the instant case there was no threatening gesture made by an occupant of the car. Appellant's assertion is in error, and his factual distinction in *Bell*, *supra*, fails to render that holding inapplicable to the facts of the instant case.

The facts available to the police officers at the time they commenced their action which resulted in the arrest of appellant were as follows: The officers observed the automobile parked after dark in an abandoned residential area of the city. They observed three men seated in the front seat and the motor was running. The car was then operated some distance without lights. It was for this offense that the officers stopped the car. Upon approaching the automobile and with the aid of their own flashlights and the dome light in the car the officers observed clothing and suitcases piled high in the back of the car. Also observed on top of the pile was a woman's fur coat.

Of particular significance to the officers was the fact that about an hour and a half before they had witnessed at the precinct station a report by Mr. Cotton of the theft of a movie camera, many items of clothing and suitcases from his automobile which had been parked in the vicinity of appellant's arrest. The officers specifically remembered a suitcase, a fur coat and a movie camera in addition to other items of apparel. It was on this basis that the three occupants of the automobile were taken to the precinct.

Despite appellant's attempt to distinguish the instant case from *Bell v. United States*, *supra*, it is the government's contention that the facts of the instant case when viewed in light of those in *Bell* make out a strikingly similar and significantly stronger case for a valid arrest. It is true that in the instant case there was no threatening gesture made by any of the occupants of the automobile. This factor, however, is of no importance. Of commanding importance is the fact that the officers knew of a very recent theft in the area of property fitting the description of that seen in the car.³ In light of the test of what

³ Such a factor did not exist with regard to the cartons of cigarettes observed in the back of the automobile in the *Bell* case. The best that can be said of *Bell* is that the car was seen to pull away from the curb in front of

a reasonable, prudent and experienced officer would do under the circumstances, the action of the police in this case was proper. *Brinegar v. United States*, 338 U.S. 160 (1949). Since the arrest in the instant case is supported under the *Bell* decision it is unnecessary to determine whether, in contemplation of law, appellant's arrest occurred when the automobile was stopped for operating without lights or whether his arrest occurred after the police observed the contraband in the rear of the car. In either event we submit that the arrest was lawful and the subsequent seizure was proper.* Cf. *Brinegar v. United States*, *supra*.

The trial court need not have *sua sponte* instructed on accomplice testimony

Appellant asserts (Br. 37) that it was plain error affecting substantial rights for the court to have failed to, *sua sponte*, instruct the jury on the definition of an accomplice and that if the jury found Robinson to be an accomplice then his testimony should be received with caution and scrutinized with care. The first question, therefore, is whether under the facts of this case Robinson appeared as a matter of law to be an accomplice. Since the only link connecting Robinson with the offense was his presence in the car, we submit that this was insufficient to justify such a conclusion of law. See *Head v. Commonwealth*, 310 S.W. 2d 285 (Ky., 1958). An accomplice has been defined by this Court and indeed is universally considered⁵ to be one who "knowingly and voluntarily" aids

a food store at 3:00 A.M. See *Christensen v. United States*, 104 U.S. App. D.C. 35, 259 F. 2d 192 (1958), dissenting opinion by Bazelon, J., footnote 16.

* Compare *Henry v. United States*, 361 U.S. 98, 4 L. 2d 134, 80 S. Ct. 168 (1959). In that case the arrest was made by stopping the automobile in which the appellant was riding during the daytime. No traffic violation had been committed. The government conceded that the arrest occurred when the car was stopped and the court held that the seizure of the unknown contents of cartons in the rear of the car was improper. In the instant case both factors found wanting in *Henry* are supplied. There was a traffic infraction and the officers possessed specific information regarding the theft of property fitting the description of that seen in appellant's car, such theft having occurred only an hour or so before and only a few blocks from the point of arrest.

⁵ See 1 Words and Phrases (Permanent Ed.), p. 456.

another in the commission of a crime. *Tomlinson v. United States*, 68 App. D.C. 106, 93 F. 2d 652 (1937). To be an accomplice a witness must be shown to have been "in corrupt cooperation" in the commission of the crime. *Egan v. United States*, 52 App. D.C. 384, 287 Fed. 958 (1923).

The facts of this case clearly reflect that the witness Robinson was in no way connected corruptly with appellant to the commission of the offense charged. True enough, he was arrested for the same offense but the officers would have been derelict in their duty had they not made such an arrest. Robinson was merely driving the automobile at the behest of his superior at the used car lot in order to aid the appellant and his companion in their ostensible desire to purchase a car. He stopped the car at their request and waited their return. They brought with them the contraband in question. Thus the testimony of Robinson fails to link him in any other than in an innocent way with the offense. Moreover, the court instructed regarding a possible finding, consistent with the defense, that Robinson had placed the contraband in the car (J.A. 83).

The only other source from whence evidence could come connecting Robinson in a corrupt way with the offense was the testimony of the defendant Coleman and the appellant himself. Significantly, this is where the appellant's contention fails most drastically. In appellant's testimony as well as that of Coleman, each denied any knowledge of how the contraband got in the car. They denied seeing it before it was discovered by the police. In view of this testimony the appellant himself has denied the very existence of corrupt cooperation so necessary to establish an accomplice relationship. Thus, we submit that even had such an instruction been requested the trial court might properly have denied it and certainly the failure to, *sua sponte*, instruct on this matter is not plain error requiring notice under Rule 52(b), Federal Rules of Criminal Procedure. Cf. *Bird v. United States*, 187 U.S. 118 (1902).

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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United States Court of Appeals
For the
District of Columbia Circuit

REPLY BRIEF FOR APPELLANT FILED DEC 1 - 1960

Joseph W. Stewart

UNITED STATES COURT OF APPEALS

CLERK

For the District of Columbia Circuit

No. 15820

RAYMOND A. CAMPBELL, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15820

RAYMOND A. CAMPBELL, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANT

1. Unreasonable Search and Seizure

The appellee's position seems to come down to the proposition that it is "unnecessary to determine whether . . . appellant's arrest occurred when the automobile was stopped" for a traffic violation or "after the police observed" the clothes in the back of the car. The asserted basis for this curious proposition is "the arrest in the instant case is supported" by the Bell ^{1/} decision.

^{1/} Bell v. United States, 102 U. S. App. D. C. 383, 254 F. 2d 82, Cert. denied, 352 U. S. 1017 (1958).

(Brief for appellee, p.⁷ 6). 1/ Just how the Bell case supports this novel view is far from clear. We do not read the Bell decision as a departure from the fundamental rule that a legal search and seizure without a warrant can only be made as an appropriate incident to a proper arrest. The question of when appellant was arrested is most significant, since only the facts and circumstances known to the officers prior to the arrest can be considered in determining whether there was an appropriate search and seizure incident to a proper arrest. 2/

As emphasized in our principal brief, there can be no legal search and seizure incident to an arrest merely for a traffic violation (Brief for appellant, pp. 22-24), 3/ since there is nothing ~~connected~~ with the crime to search for.

The Bell case does not suggest otherwise although the government apparently interprets the Bell decision in a peculiar manner. 4/ As pointed out by this Court in that

1/ Hereinafter cited as ("appellee").

2/ Rios v. United States, 364 U. S. 253 (1960); Brief for appellant, pp. 25-26.

3/ Hereinafter cited as ("appellant").

4/ See "Transcript of lectures and discussions relative to the law on Search and Seizure and its effect on law enforcement, conducted by the U. S. Attorney's Office for the District of Columbia in cooperation with the

case, "An automobile driven without lights in the middle of the night and with forty cartons of cigarettes (8,000 cigarettes) in the back seat calls for investigation and for reasonable explanation." (Emphasis supplied.) However, even these circumstances were not held to warrant an arrest justifying a search until investigation had ripened suspicion into probable cause. In the Bell case, after receiving an unsatisfactory reply to an inquiry concerning the cigarettes, the officers were given reason to fear for their own safety by an apparently threatening gesture by one of the men in the car. At this point, this Court (including the dissenting Judge) was of the view that the officers were justified in ordering the men out of the car.

Metropolitan Police Department, Washington, D. C." (February 1959) at p. 15 where the representative of the U. S. Attorney's office said in reference to Bell that "[t]he Court of Appeals affirmed the conviction on the theory that the officer had a right to approach the car; there was a public offense being committed in the officer's presence; he had a duty to arrest; he had a right to search incident to that arrest and in this case -- since the search by the flashing of the light was contemporaneous with the arrest, the search was a proper search and the evidence was not suppressible." Apparently the Government believes that there can be a valid search and seizure incident to a mere arrest for a traffic violation. We believe this view is an erroneous one. On the question of observations made before the unlawful arrest, see appellant, p. 25, note 1.

This action -- ordering the men out of the car -- rather than stopping the car for a traffic violation -- constituted the arrest in the Bell case which provided the foundation for the proper search and seizure. Accordingly, when the Bell decision is correctly understood, the decision does not depart from the fundamental rules of reasonable searches and seizures.

As above noted in the Bell case, the circumstances of driving without lights in the middle of the night away from a store and the subsequent observation of an unusual load of forty cartons of cigarettes, called for an investigation and reasonable explanation. The less unusual circumstances of a car without lights in the early evening, containing a pile of clothes (which is fairly normal cargo for an automobile), here presented, may also have warranted an inquiry. 1/ However, in the Bell case, the reply to the

1/ An inquiry may also have been warranted in light of the fact that the officers knew of a theft of clothes. But this knowledge did not establish probable cause. (appellant, p. 32). In its summary of argument, appellee refers to the "known recent" theft (appellee, p. 47). In its argument, it characterizes the theft as "very recent" (appellee, p. 6), and finally it declares that the theft "occurred only an hour or so before" the arrest (appellee, p. 76). The fact is that there is no evidence in this case as to exactly when the alleged theft took place. The most that can be said is that it occurred sometime between early morning when Mr. Cotton parked his car and sometime after four forty-five p.m. when he returned to his car. In no event could it have occurred later than at least three

inquiry was unsatisfactory. In the present case the reply to the inquiry 1/ was not inherently unreasonable. If the officers were of the view that the explanation given was lacking in desirable detail, they were completely free to pursue the inquiry further; since, admittedly, there was no action upon the part of any of the three men to suggest resistance to or danger to the officers. In Bell the need for further investigation was dispensed with only after "one of the men reached as though for a weapon." Appellee states that the threatening gesture in Bell "was of no importance." On the contrary, the threatening gesture is of crucial importance. In Bell further investigation could not have reasonably been required after the gesture. In this case further investigation was required before a proper arrest could be made since the men offered no resistance.

An investigation more extended than one question and one answer was required by the standard of reasonable conduct on the part of the arresting officers. What they saw,

hours before the arrest (J. A. 28, 29). The presence of the three men in a car four or five blocks from the location of the theft at a point of time so far removed from the time of the theft, gives no basis for the inference that this presence was a circumstance which would give rational ground for suspicion.

1/ Either the officers' or Robinson's version was reasonable (appellant, p. 34).

apparently dimly and imperfectly 1/ in the back seat, was a pile of clothes including a woman's coat and suitcases and/or a hat box. There is nothing at all odd about carrying clothes about in an automobile. The officers had heard that clothes and a movie camera had been stolen. The officers never even glimpsed the case, which later proved to contain a movie camera, until after they had "slid" Campbell and Coleman out of the car "on the suspicion" that they had taken the clothes (appellant, pp. 4-5). 2/ The time when the officers ordered the men to transfer from Robinson's car was the latest point at which the arrest could have taken place and at that moment the officers had, at the most, some basis for suspicion and inquiry. 3/ They had no justification for arrest. The subsequent search and seizure after this point was, therefore, illegal.

-
- 1/ Any clear look at the woman's coat, for example, would have shown that it was synthetic and not "fur" as they had heard (appellant, p. 32).
- 2/ Therefore, the "movie camera" cannot be considered on the question of probable cause (appellant, pp. 25-26).
- 3/ The operative fact in the minds of the officers causing them to make the unlawful arrest was the clothing seen on the back seat of the car (J. A. 20, 23; appellant, pp. 3, 4, 32). And as to this clothing, their observations were most assuredly not very clear (appellant, p. 32).

Appellee also seeks support from Brinegar v. United States, 338 U. S. 160 (1949). That case is of no assistance here. The Brinegar case and its ancestor, Carroll v. United States, 267 U. S. 132 (1925), deal with a special kind of situation which we do not have in this case. Those "liquor" cases related to the special circumstances where the transportation of the articles in question was itself a crime. Price v. United States, 262 F. 2d 684 (10th Cir. 1959); Clay v. United States, 239 F. 2d 196 (5th Cir. 1956), Cert. denied, 355 U. S. 863 (1957); Green v. District of Columbia, (Mun. Ct. App. D. C. 1952), 91 Atl. 2d 712; appellant, pp. 20-21. The crime charged in the present case is not the transportation of stolen goods. In any event, the present case contains none of the circumstances relied on in Carroll and Brinegar to validate the police action in those cases. 1/

1/ In those cases the arrests were made by federal officers charged with enforcing federal laws outlawing the transportation of intoxicating liquors; they were patrolling the highway in furtherance of this charge; they recognized the driver of the car, before the arrest, as a recent violator of the liquor laws; the driver was proceeding from a known source of liquor supply toward a probable illegal market, "under circumstances indicating no other probable purpose than to carry on his illegal adventure." Brinegar v. United States, supra at 166.

A careful review of what the officers actually knew and saw prior to the arrest leaves no doubt but that the officers acted unreasonably in failing to make an adequate investigation before making an arrest. As the Supreme Court has said, ". . . the history of the criminal law proves the tolerance of short-cut methods in law enforcement impairs its enduring effectiveness." Miller v. United States, 357 U. S. 301, 313 (1958). It is, therefore, submitted that the motion to suppress the evidence seized should have been granted.

2. The failure to give the accomplice instructions.

The appellee's position is that the accomplice instruction would not have been appropriate even if requested. The appellee's position is based on its mistaken assumption that the determinative question is whether "under the facts of the case Robinson appeared as a matter of law to be an accomplice" (appellee, p. 7). Appellee apparently has failed to comprehend our position. We will, therefore, restate it. Our contention is not "whether under the facts of this case Robinson appeared as a matter of law to be an accomplice" (appellee, p. 7). We never contended and we do not contend now that the facts required the court to determine "as a matter of law" that Robinson was an accomplice. We do assert that the evidence required the court below to define the term accomplice for the jury;

and to instruct the jury that, if the jury found that Robinson was an accomplice, his testimony should be received with caution and scrutinized with care (appellant, p. 42). Our position is very well stated by the case cited by appellee: "Where the evidence creates a doubt as to whether one is an accomplice, the question should be submitted to the jury for determination, with an appropriate instruction as to the corroboration required and the weight of such testimony." Head v. Commonwealth, 310 S. W. 2d 285, 287 (1958). The question is not whether Robinson was an accomplice as a matter of law, but whether the evidence raised the question whether Robinson was an accomplice. Egan v. United States, 52 App. D. C. 384, 287 Fed. 958 (1923). ^{1/} ". . . [T]he fair administration of justice requires that if there is a reasonable doubt as to whether a witness is an accomplice, the jury should resolve the doubt and receive full instructions on the law of accomplice testimony, including a caution against placing too much reliance upon the testimony of an accomplice." Phelps v. United States, 252 F. 2d 49 (6th Cir. 1958); Egan v. United States, supra.

^{1/} It is only when the facts are not in dispute that the court must charge the jury that the witness is, as a matter of law, an accomplice. Egan v. United States, supra.

An accomplice is generally defined as one who could be indicted for the same crime of which the defendant is accused (appellant, p. 41). Appellee, however, asserts that the "universally considered" definition of an accomplice is "one who 'knowingly and voluntarily' aids another in the commission of a crime"; "to be an accomplice a witness must be shown to have been 'in corrupt cooperation' in the commission of a crime." Appellee contends that there is no showing that Robinson was in corrupt cooperation; at least not enough of a showing to conclude that as a "matter of law" Robinson was an accomplice (appellee, p. 77). The definitions referred to by appellee are derived from Egan v. United States, supra and Tomlinson v. United States, 68 App. D. C. 106, 93 F. 2d 652 (1937) which relied on Egan. In Egan the defendant was tried for accepting a bribe. The principal government witness was the person alleged to have given defendant the bribe. The witness in question could not, of course, have been indicted for the crime of accepting a bribe. This Court recognized that ordinarily one who can be indicted for the same crime, for which defendant is being tried, is an accomplice for purposes of the accomplice testimony rule. This Court held that the definition of an accomplice, for purposes of the rule requiring an instruction, is broader than whether the witness could have been indicted for the same crime; and

that since the witness could be found to have been "in corrupt cooperation" with the accused the accomplice instruction should have been given. Thus, in the District of Columbia, the definition of who may be an accomplice (within the rule requiring an instruction) is broader than the definition in other jurisdictions. See Annotation, 73 A. L. R. 389.

In the District even though a witness cannot be indicted for the same crime as accused, he still may be an accomplice for purposes of the cautionary instruction. In the District, and in every other jurisdiction, one who can be indicted for the same crime is surely an accomplice, for purposes of the accomplice instruction, whether or not there is a showing of "corrupt cooperation." See Annotation, 19 A. L. R. 2d 1352; appellant, p. 41. Robinson clearly qualified as one who could be indicted for the offense.

Although appellee suggests that Robinson's presence in the car containing the stolen goods was necessarily innocent, the facts in this case raise a reasonable doubt whether Robinson was an accomplice. (appellant, pp. 41-44). The trial court, in colloquy with counsel, itself commented that the jury might believe that "all three of them stole it" (the stolen property). (Id. at 43-44). The instruction on accomplice testimony was, therefore, not only appropriate, but required.

It is most significant that the guilt of the crime of larceny could be established simply on a finding of unexplained (to the satisfaction of the jury) recent possession, actual or constructive, of the stolen goods. The ultimate question here was who had possession of the goods. As appellee points out, the jury could have found, on the evidence, that Robinson had possession of these goods (appellee, p. ⁸7). The jury could also have found that possession was in appellant or Coleman; or it could have found that all three of them had possession. Under these circumstances, the evidence raised the reasonable doubt which requires the accomplice instruction and the jury should have been allowed to determine whether or not the witness was an accomplice. Phelps v. United States, supra, at 52-53.

Appellee urges that "appellant's contention fails most drastically" because appellant and Coleman denied having any knowledge of the stolen property or of the theft. This argument has been made before in this context and unsuccessfully. Government counsel in the past have urged that where a defendant denies any connection or complicity with the accomplice witness, the court may not instruct the jury on the law of accomplice testimony. The courts have responded: "Surely this cannot be what is meant for if the defendant enters a plea of not guilty and contests the

truth of the State's testimony of a claimed accomplice to prove his guilt, he does not admit the testimony of such witness, for to do so would be tantamount to a plea of guilty." Carter v. State, 55 Okla. Crim. 234, 28 P. 2d 581, (1934); Annotation, 19 A. L. R. 2d 1352, 1354.

Obviously, under appellee's theory (for which no authority is cited), in any case where the defendant availed himself of his right to plead not guilty and to deny his connection with the alleged crime or the accomplice witness, he could not be given the benefit of the accomplice instruction. This is simply not the law, and such an approach defeats the very purpose of the rule requiring the instruction. Accordingly, Campbell was entitled to a cautionary instruction on accomplice testimony even though he pled innocent and denied any knowledge of how the clothes and camera happened to be in the car in which he was riding. Robinson, who was promptly released from jail immediately after testifying before the grand jury, could very easily have been saving his own skin by laying the entire blame on appellant and Coleman. Robinson's threat to "drop a weight on" appellant and Coleman if they did not exonerate him carries a strong inference that he was doing just that.

The jury should have been instructed to weigh his testimony with caution. The failure of the court to have done so constituted plain error (appellant, pp. 44-47).

3. Revocation of probation

At the time of appellant's conviction in the present case, Crim. No. 103-60, he was on probation with respect to a prior conviction in Crim. No. 816-59. His probation was revoked solely because of the conviction in Crim. No. 103-60. Appellant filed a notice of appeal on May 27, 1960. On October 13, 1960, appellant moved for bail pending appeal. The District Judge granted bail in Crim. No. 103-60 but refused to grant bail in Crim. No. 816-59 since he believed that it was not clear from the notice of appeal that it included Crim. No. 816-59. On October 18, 1960, appellant moved this Court for leave to amend the notice of appeal in order to make it certain that the notice of appeal preserved the question of revocation of probation. This Court, on November 14, 1960, ordered that this motion be dismissed "it appearing to the Court that the notice of appeal is sufficient to preserve the question of revocation of probation." Since appellant's brief was required to be filed by October 31, 1960, the question of revocation of probation was not thoroughly considered therein. Since it appears from the record and the papers filed with

respect to the motion for leave to amend the notice of appeal that probation was revoked solely because of the conviction in Crim. No. 103-60, appellant submits that if this Court should reverse the conviction in Crim. No. 103-60, it would be appropriate for this Court to reverse the order revoking probation in Crim. No. 816-59 and remand that question to the District Court for its further consideration.

Respectfully submitted,

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